

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:10-CR-050-A
)
Government,)
) FORT WORTH, TEXAS
VERSUS)
) AUGUST 13, 2010
JOSE JULIAN OROZCO-LOPEZ (01),)
JOANA MARTHA ROSALES (02),)
SALVADOR NUNEZ (04),)
J. TRINIDAD GOMEZ, JR. (05),)
JOSE JESUS HORTA-FIGUEROA (06),)
Defendants.) 9:00 A.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING HEARING FOR JOSE JULIAN OROZCO-LOPEZ
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

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18 Proceedings reported by mechanical stenography, transcript
19 produced by computer.
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1	<u>I N D E X</u>	
2	<u>PROCEEDING</u>	<u>PAGE</u>
3	Objections to PSR by Mr. Perez.....	07
4	TESTIMONY OF JEFF BRANTLEY (IN ALL FIVE CASES)	
	Direct Examination by Mr. Burgess.....	11
5	Cross-Examination by Mr. De La Garza.....	17
	Cross-Examination by Mr. Perez.....	22
6	Cross-Examination by Mr. O'Shea.....	24
	Cross-Examination by Mr. Durden.....	26
7		
8	Argument by Mr. De La Garza.....	30
	Court's Ruling.....	32
9		
10	Argument by Mr. Perez.....	32
	Court's Ruling.....	35
11		
12	Court's Ruling on Horta-Figueroa and Nunez.....	37
13	<u>OROZCO-LOPEZ CASE ONLY</u>	
14	Court's Findings.....	39
15	Statements on Sentencing	
	By Mr. Perez.....	39
16	By Defendant Orozco-Lopez.....	42
17	Sentence of the Court.....	42
18	Government's Motion to Dismiss.....	42**
	Court's Ruling.....	42**
19	<u>***NOTE: DISMISSAL IN OROZCO-LOPEZ CASE DONE</u>	
20	<u>DURING HORTA-FIGUEROA CASE***</u>	
21	Reporter's Certificate.....	46
22	Word Index.....	47
23		
24		
25		

P R O C E E D I N G S

August 13, 2010 - 9:00 a.m.

THE COURT: Okay. Let me call now in this same case, 4:10-CR-050-A, defendant Jose Julian Orozco-Lopez, and he's represented by Mr. Mark Perez.

MR. PEREZ: Mark Perez, Your Honor.

THE COURT: Let me find the name. Mr. Perez?

MR. PEREZ: Yes, Your Honor.

THE COURT: Okay. I don't know whether I've met you. And Mr. Burgess is here for the Government.

MR. BURGESS: Yes, Your Honor.

THE COURT: He's apparently here with the Government in all cases. Who is your case agent?

MR. BURGESS: Jeff Brantley, Your Honor, task force officer.

THE COURT: Okay. Now, Mr. Perez, does your client need an interpreter?

MR. PEREZ: He does, Your Honor.

THE COURT: Okay. And Ms. Gonzalez is here for that purpose. Have you been sworn in this case?

THE INTERPRETER: No, Your Honor.

THE COURT: Okay. If you would, raise your right hand to be sworn.

(Interpreter sworn by the courtroom deputy).

THE COURT: Okay. Mr. -- what is your full name by

1 the way?

2 *DEFENDANT OROZCO-LOPEZ:* Jose Julian Orozco-Lopez.

3 *THE COURT:* Okay. And do you normally go by the
4 surname of Orozco?

5 *DEFENDANT OROZCO-LOPEZ:* Yes. Yes, sir.

6 *THE COURT:* Okay. You appeared before me on May 4,
7 2010. Let's see. I've got the wrong --

8 *MR. PEREZ:* Your Honor, we're having some problems.
9 There are some technical problems with this equipment. If
10 it's okay, can we do this without the use of that equipment?
11 I believe my client can hear.

12 *THE COURT:* Well, if the interpreter can simply
13 stand by him.

14 *THE INTERPRETER:* Yes, Your Honor, I can do that.
15 That's not a problem.

16 *MR. PEREZ:* Thank you, Your Honor.

17 *THE COURT:* How many will we need interpreters for?
18 Have you figured that out, Ms. Gonzalez?

19 *THE INTERPRETER:* Apparently, there are three total
20 and --

21 *THE COURT:* Okay. I'm going to take each defendant
22 up separately to begin with, and as I do that, you could stand
23 by the defendant beforehand.

24 *THE INTERPRETER:* Very well.

25 *THE COURT:* But then at a point, I will be dealing

1 with something that effects all three defendants at the same
2 time.

3 *THE INTERPRETER:* Yes, sir.

4 *THE COURT:* So see how that can work, if you can
5 position yourself where they can all hear you and you can hear
6 them --

7 *THE INTERPRETER:* Very well, Your Honor.

8 *THE COURT:* -- at the same time. If you have a
9 problem, let me know.

10 *THE INTERPRETER:* I will. Thank you.

11 *THE COURT:* Okay. I've forgotten where we were.
12 What is your surname? What surname do you
13 ordinarily use?

14 *DEFENDANT OROZCO-LOPEZ:* Orozco-Lopez.

15 *THE COURT:* Okay. Let's see. I may be repeating
16 myself. You appeared before me on May 4, 2010 with your
17 attorney and pleaded guilty to the offense charged by the
18 one-count indictment in this case, conspiracy to possess with
19 intent to distribute a controlled substance. And, of course,
20 we're here today for sentencing based on the conviction
21 resulting from that plea.

22 Mr. Perez, did you and your client receive in a
23 timely manner the presentence report and the addendum to it?

24 *MR. PEREZ:* Yes, Your Honor, we did.

25 *THE COURT:* And were those items read to your client

1 in his language?

2 MR. PEREZ: Yes, Your Honor.

3 THE COURT: And did the two of you discuss those
4 items with each other in his language?

5 MR. PEREZ: Yes, Your Honor.

6 THE COURT: Okay. And there were some objections
7 made, as I recall. Have you seen the response to the
8 objections, the addendum where the probation officer
9 responded, and my order expressing my tentative conclusion
10 that they are about merit.

11 Do you still wish to pursue any of those objections?

12 MR. PEREZ: Your Honor, we will withdraw our first
13 objection. Regarding the second objection, there is an issue
14 as to primarily one of the five factors in the safety valve
15 that we want to address regarding the untruthfulness.

16 And although it's not in my PSR, I think it's
17 important that I also address the issue of the firearm because
18 Your Honor will consider that, I'm sure, in whether to give my
19 client the safety valve.

20 THE COURT: Okay. But you only objected to the
21 truthfulness aspect?

22 MR. PEREZ: I did, Your Honor, but I do feel it's
23 necessary that I address the firearm, unless the Court doesn't
24 feel like that's an issue.

25 THE COURT: Okay. Well, I'll let you address it.

1 You don't need to -- we'll come back to that.

2 MR. PEREZ: Thank you, Your Honor.

3 THE COURT: We're going to come back to that in a
4 minute, so why don't you and your client step back, and your
5 client can be seated wherever the marshal wants your client to
6 be seated, while I call the other defendants forward.

7 (Proceedings continue with other defendants).

8 (Proceedings jointly as to five defendants, as
9 follows:)

10 THE COURT: Okay. Why don't we -- at this time,
11 this will be applicable to all of the defendants who are all
12 in the courtroom with their attorneys.

13 Why don't we have the testimony relative at this
14 time on the gun issue. And as I understand it, the only gun
15 issue now before the Court -- everybody's abandoned the
16 two-level increase based on the gun, the objection to that,
17 but they are all saying -- except Ms. Rosales, everybody else
18 is saying that there should be a reduction based on the safety
19 valve on the grounds that the defendant wasn't in actual or
20 constructive possession of the firearm, as I understand where
21 we are.

22 So why don't we deal with both of those subjects.
23 Let's go ahead and -- y'all can be seated, Mr. Danielson, you
24 and your client.

25 MR. BURGESS: May I proceed, Your Honor?

1 THE COURT: Yes.

2 MR. BURGESS: I call Task Force Officer Jeff
3 Brantley.

4 THE COURT: Let me be sure the interpreter is being
5 able to interpret for all three defendants that don't speak
6 English.

7 THE INTERPRETER: They are putting their headset on
8 as we speak, Your Honor.

9 THE COURT: Okay. Before we go any further, let's
10 be sure that the interpretation is being effectively
11 accomplished.

12 THE INTERPRETER: Okay, Your Honor.

13 (Pause in Proceedings)

14 THE INTERPRETER: All three are hearing now.

15 THE COURT: Okay. If there's any problem with the
16 interpretation, let me know so we can immediately deal with
17 it.

18 Okay. Raise your right hand to be sworn.

19 (Witness sworn).

20 THE COURT: Okay. Be seated.

21 Okay. Why don't you -- I think the issue of the gun
22 is related to the loss of acceptance of responsibility on
23 Mr. Durden -- before we go any further, let me be sure I
24 understand, Mr. Durden, what your position is on acceptance of
25 responsibility. I think the probation officer suggested that

1 it should be denied because of your client's refusal to
2 acknowledge the existence of a gun or something like that.

3 MR. DURDEN: Well, actually, Your Honor, initially
4 the probation officer recommended that the acceptance of
5 responsibility be denied based upon his taking my advice to --

6 THE COURT: Oh, I remember. You're refreshing my
7 memory. He wouldn't discuss anything, other than what was in
8 the factual resume.

9 MR. DURDEN: I advised him to do that. He took my
10 advice, and I was wrong, and the probation officer then
11 further met with him and he discussed the case at length. I
12 believe there was actually a report filed with the Court about
13 all of the information that he gave to the probation officer
14 after that in that second meeting.

15 THE COURT: Let me see where we are on that before
16 we go further.

17 (Pause in Proceedings).

18 THE COURT: I think the end result was that after
19 the -- as I read the addendum, after the second interview,
20 Mr. Durden, your client denied any knowledge of the existence
21 of the firearm that was possessed by either him or his
22 co-defendants, and the probation officer thought that simply
23 was not a credible position and, therefore, questioned whether
24 your client was denying acceptance of responsibility.

25 I think that's where we are. So we'll limit the

1 discussion to that, since that seems to be the position the
2 probation officer took, and it appears to me to be a
3 reasonable position.

4 So we'll go ahead with the testimony and then if you
5 want to ask any questions of Mr. Brantley on that subject, if
6 it's pertinent, you can at this time.

7 MR. DURDEN: Thank you, Your Honor.

8 THE COURT: Okay. Go ahead.

9 MR. BURGESS: Thank you, Your Honor.

10 **JEFF BRANTLEY,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. BURGESS:**

14 Q. Please state your name?

15 A. Jeff Brantley.

16 Q. How are you employed?

17 A. I am a task force officer with the DEA. I work for
18 the City of North Richland Hills as a police officer.

19 Q. You have been present in the courtroom today and have
20 seen these five defendants be brought forward, correct?

21 A. Yes.

22 Q. Were you responsible for the investigation of this
23 case?

24 A. Yes, sir.

25 Q. As part of that investigation, was a residence

1 located at Cockrell Hill identified?

2 A. Yes, it was.

3 Q. Was that location being -- how was that location
4 being used?

5 A. It was being used to manufacture and distribute
6 methamphetamine in large quantities.

7 Q. When you say "manufacture," how was it being
8 manufactured?

9 A. They were taking it from either powder and liquid
10 form and transferring it to crystals.

11 Q. Is that a long-term process?

12 A. Not real long, no, sir.

13 Q. Okay. In the course of the investigation, was it
14 determined that each of these defendants was regularly present
15 at that residence?

16 A. Yes.

17 Q. And for what purpose? For the manufacture and
18 distribution?

19 A. Correct.

20 Q. During the course of the investigation, was a search
21 conducted of that residence?

22 A. Yes, it was.

23 Q. Was a firearm found?

24 A. Yes, it was.

25 Q. Where was it found?

1 A. It was found in the bedroom nightstand.

2 Q. Was there anything located with the firearm that
3 would indicate its connection to drug trafficking?

4 A. I believe a digital scale was found in the same
5 drawer.

6 Q. In the course of the investigation, did any defendant
7 acknowledge that they either owned or personally possessed
8 that firearm?

9 A. No.

10 MR. BURGESS: That's all I would offer on the
11 firearm, Your Honor.

12 THE COURT: Okay. Let me ask a question or two.

13 Were each of the defendants here in the courtroom,
14 was each of the defendants asked about the firearm?

15 THE WITNESS: To my knowledge, yes, sir, they were.

16 THE COURT: Okay. What was the bedroom used for?
17 Do you have any idea?

18 THE WITNESS: The bedroom or the apartment was
19 actually a residence of Ms. Rosales' father. He was in Mexico
20 and they had --

21 THE COURT: Whose father?

22 THE WITNESS: Ms. Rosales.

23 THE COURT: You said Ms. Rosales?

24 THE WITNESS: Yes, Ms. Rosales.

25 THE COURT: Okay. Go ahead.

1 THE WITNESS: It was actually his apartment, and he
2 had left it in her care as he was in Mexico, I believe
3 visiting family.

4 THE COURT: Was he involved in the drug trafficking?

5 THE WITNESS: Yes, sir. Yes, sir.

6 THE COURT: What was his role in the drug
7 trafficking?

8 THE WITNESS: Oh, was he involved?

9 THE COURT: The father.

10 THE WITNESS: There were a couple of statements
11 saying that he was, but I do not know.

12 THE COURT: And the apartment had been left in
13 charge of the daughter, Ms. Rosales?

14 THE WITNESS: Yes.

15 THE COURT: And who all had ready access to the
16 apartment?

17 THE WITNESS: Ms. Rosales, Mr. Orozco, and
18 Mr. Gomez.

19 THE COURT: How did Mr. Orozco and Mr. Gomez have
20 access?

21 THE WITNESS: One of them, I believe Mr. Gomez, had
22 a key himself. Ms. Rosales and Mr. Orozco are, I believe,
23 common law, or boyfriend/girlfriend one, and so they were
24 together the majority of the time.

25 THE COURT: Was Mr. Orozco staying at the apartment?

1 THE WITNESS: No, sir. They had their own residence
2 in Grand Prairie.

3 THE COURT: Ms. Rosales and Mr. Orozco lived
4 together someplace else?

5 THE WITNESS: Yes, sir.

6 THE COURT: But both of them had free access to the
7 apartment?

8 THE WITNESS: Yes, sir.

9 THE COURT: And do you have any idea or any sense as
10 to how frequently Mr. Orozco might be in the apartment?

11 THE WITNESS: It was pretty common, by their
12 statements. They were there quite a bit.

13 THE COURT: Daily, for example?

14 THE WITNESS: I would say at least weekly. I
15 wouldn't say daily, but -- and again, it was just being
16 utilized just simply to manufacture and store and distribute
17 the methamphetamine.

18 THE COURT: So it was being used in effect as
19 a -- not as a residence, but as a place to manufacture, store,
20 and distribute methamphetamine?

21 THE WITNESS: Well, her father used it as a
22 residence. They did not.

23 THE COURT: But I mean these defendants.

24 THE WITNESS: Yes, sir, that was their only role.
25 As far as I know, I don't believe they stayed there.

1 THE COURT: How long did these defendants use that
2 apartment for that purpose or for those purposes?

3 THE WITNESS: I believe he had been gone for a month
4 or two, so they had been using it pretty much the whole time.

5 THE COURT: Who was the cook so to speak? Who made
6 the -- converted the powder to ice?

7 THE WITNESS: Mr. Gomez was the one who knew how to
8 do it. They all had, at some point, helped in one way or the
9 other.

10 THE COURT: In the manufacture of it?

11 THE WITNESS: Yes, sir.

12 THE COURT: Tell me how you convert the powder into
13 ice.

14 THE WITNESS: They were taking just a pot of water,
15 and they would put the powder into the water and just barely
16 cover it, and then they would bring it to a boil. And once
17 it -- I mean, once it was just pure liquid, then they would
18 pour it into containers and let it dry. And as it dried, it
19 would crystalize and then they would pour it out, lay it out
20 on something and allow it to dry more.

21 THE COURT: And you say every defendant -- all five
22 of the defendants before me now participated in that
23 manufacturing process?

24 THE WITNESS: That is my understanding from their
25 statements, yes, sir.

1 THE COURT: And is it something that each of them
2 did frequently?

3 THE WITNESS: I believe Mr. Gomez was the one that
4 did it the most. I really cannot say how many times each one
5 may have participated.

6 THE COURT: Okay. How did Mr. Gomez get into the
7 apartment when he wanted to come and go or get in or out when
8 he wanted to?

9 THE WITNESS: My understanding is he had a key to
10 it.

11 THE COURT: Okay. And did he make that key
12 available to any of the other defendants here in the
13 courtroom?

14 THE WITNESS: I do not know that.

15 THE COURT: Okay. Let's see. Mr. De La Garza, do
16 you have any questions of this witness?

17 MR. DE LA GARZA: Briefly, if I may, Your Honor.

18 THE COURT: Okay.

19 **CROSS-EXAMINATION**

20 **BY MR. DE LA GARZA:**

21 Q. Officer Brantley, based upon your investigation, do
22 you have any specific intelligence or information that my
23 client, Mr. Gomez, knew of the existence of that firearm?

24 A. No, I do not.

25 Q. Do you have any specific information that he intended

1 to exercise control, care, or custody of that firearm?

2 A. I do not.

3 MR. DE LA GARZA: That's all I have, Your Honor.

4 THE COURT: The scales that were in the -- you can
5 sit down. I'm asking him a question.

6 MR. DE LA GARZA: Thank you.

7 THE COURT: The scales that were in the drawer with
8 the firearm -- first of all, what kind of firearm was it?

9 THE WITNESS: It was a handgun.

10 THE COURT: And did it have bullets in it?

11 THE WITNESS: I believe it did, Your Honor.

12 THE COURT: Okay. The scales that were with it,
13 what were those scales used for?

14 THE WITNESS: Weighing out methamphetamine, usually
15 in small amounts because it was just a small digital scale, so
16 it wouldn't weigh up to big amounts of methamphetamine.

17 THE COURT: Okay. Was there any other scale in the
18 apartment found as a result of the search?

19 THE WITNESS: I don't believe so, but I don't really
20 recall if we found any other scales other than that one.

21 THE COURT: Okay. So that's your best recollection
22 is that that was the only one found?

23 THE WITNESS: I believe so.

24 THE COURT: So if anybody wanted to weigh out a
25 small amount of methamphetamine for use or sale, for example,

1 they had to use that particular scale and had to go into that
2 particular drawer?

3 *THE WITNESS:* Yes, sir.

4 *THE COURT:* Okay. Let's see. Who is next.

5 Mr. Perez, do you have any questions of this witness?

6 *MR. PEREZ:* Yes, Your Honor, I think I have a few.

7 Your Honor, in addition to asking the detective or
8 investigator about the firearms, I did have some other
9 questions I wanted to ask him regarding the other issue in my
10 objections, and I want to know if you want me to address those
11 now.

12 *THE COURT:* Let me find your objections and see what
13 you're talking about. Okay. I'm look at your objections.
14 Indicate to me which other issues you want to --

15 *MR. PEREZ:* As to his untruthfulness, that was
16 the -- I think number five of the --

17 *THE COURT:* Which objection are you referring to, by
18 number? Do you have your objections in front of you?

19 *MR. PEREZ:* It's the second objection, Your Honor.
20 And as I addressed earlier, the second objection regarding the
21 PSR, the PSR did not directly address the firearm issue, but I
22 do know the Court can also take that into consideration.

23 *THE COURT:* Okay. I'm going to let you -- I think
24 I've heard enough to know what your client did. I think a
25 fair inference could be drawn from the record that your client

1 did have actual, if not -- at least constructive, and probably
2 actual possession of that firearm, in the sense that he had
3 ready access to it, and I think you can infer that he knew it
4 was there.

5 But I'm going to let you argue about that, and if
6 you have another question you want to ask him, that's fine.
7 I'm looking to see what you really did object to, and you
8 objected to the Government not taking the position that your
9 client had made a full disclosure.

10 MR. PEREZ: Yes, Your Honor.

11 THE COURT: And I think for me to authorize the
12 safety valve, the Government has to do that. Is that your
13 understanding?

14 MR. PEREZ: Yes, Your Honor.

15 THE COURT: Okay. Well, how can I force the
16 Government to do that?

17 MR. PEREZ: Well, I -- I do want to ask the
18 investigator a question. I did speak with Joshua Burgess and
19 also Mr. Brantley about my client's truthfulness, and I can
20 represent to you that they have admitted that they feel that
21 my client admitted to the manufacture and sale of
22 methamphetamine and as to everyone's role in the conspiracy.

23 In addition to that, Your Honor, they tell me and
24 they admit that he was honest as to the offense conduct and as
25 to his role in the conspiracy.

1 THE COURT: What was it that the Government felt
2 that he did not fully disclose?

3 THE WITNESS: Your Honor, there was another subject,
4 not involved in our investigation, but he was actually the
5 source of supply for this methamphetamine who resides in
6 Mexico, and he was a defendant in a case involved in Corpus
7 Christi.

8 When we spoke to Mr. Gomez and Mr. Orozco about this
9 subject, they did provide information, but I just don't
10 believe they gave as much as they could have. As I advised
11 Mr. Perez, I believe that whenever we would ask them
12 questions, they were truthful with their answers; but if we
13 didn't specifically ask them about something, they wouldn't
14 fill in the blanks.

15 And then there was also an issue of who was
16 responsible or who actually -- whether they brought it in or
17 whether they just picked it up -- of how 20 kilos of
18 methamphetamine got into the U.S. and who was responsible for
19 picking it up, and both of them were pointing fingers at each
20 other and saying, no, he picked it up.

21 So again, who was telling the truth, or did either
22 one of them pick it up, I do not know.

23 THE COURT: In other words, you couldn't form a
24 judgment that either of them were being truthful on that?

25 THE WITNESS: Correct.

1 THE COURT: Who is the person in Mexico, based on
2 your investigation, who was supplying the drugs?

3 THE WITNESS: It's a subject named Gilberto Jimenez,
4 who is supposed to be Mr. Orozco and Mr. Gomez' uncle.

5 THE COURT: Is he connected some way with any of the
6 drug cartel in Mexico?

7 THE WITNESS: He is supposed to be La Familia.

8 THE COURT: And what is his position with the La
9 Familia organization?

10 THE WITNESS: I'm not 100 percent on that, no, sir.

11 THE COURT: Was this group, the ones in the
12 courtroom, were they in effect an American extension of the La
13 Familia Drug Cartel?

14 THE WITNESS: The best that we could tell, with
15 their association with Mr. Jimenez, then whether they were a
16 direct affiliated with them, they would be affiliated with
17 them, you know, through that. (sic).

18 THE COURT: Well, the drugs that were being
19 distributed here, were they drugs to be distributed for La
20 Familia?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Go ahead.

23 **CROSS-EXAMINATION**

24 **BY MR. PEREZ:**

25 Q. On August -- I'm sorry. On June 23rd, 2010, when

1 you did debrief my client, you debriefed my client with two
2 other investigators from Corpus Christi?

3 A. Correct.

4 Q. And you were -- you were primarily asking questions
5 about conspiracy and how it connected to our conspiracy here?

6 A. No, they were more talking about their case. We did
7 speak of this case here quite a bit, but they were -- the
8 biggest thing was they were trying to get more information
9 about Mr. Jimenez.

10 Q. And you did find my client to be very helpful?

11 A. If I remember right, he denied not knowing a whole
12 lot about Mr. Jimenez during that debrief.

13 *THE COURT:* He denied knowing a lot about it?

14 *THE WITNESS:* Yes, sir.

15 Q. Now, you're not saying he denied knowing him?

16 A. No, he knew him, but he denied ever speaking to him
17 on the phone or really having a whole lot of contact with him.

18 Q. But he was willing to go ahead and try and identify
19 him, wasn't he?

20 A. He -- whenever they asked him a question about him,
21 yes, he tried to give them what information he could.

22 Q. And that's something you'll probably seek to do at
23 some point to see if you can identify him?

24 A. Yes, sir, as we spoke earlier, yes.

25 Q. And if you're seeking to get him to identify my

1 client, then there's a conclusion that you would believe is an
2 implication? (sic)

3 A. I'm sorry, it what?

4 Q. There would be that conclusion that you would believe
5 his identification?

6 A. Yes, if he pointed him out, yes.

7 MR. PEREZ: No further questions, Your Honor. Thank
8 you.

9 THE COURT: Okay. Let's see. Does defendant Horta
10 have any questions of this witness?

11 MR. O'SHEA: Yes, Your Honor.

12 **CROSS-EXAMINATION**

13 **BY MR. O'SHEA:**

14 Q. Agent Brantley, do you have any evidence whether
15 Mr. Horta had ownership, dominion, or control over the gun?

16 A. No, sir, I do not.

17 Q. Do you have any evidence whether Mr. Horta had
18 ownership, dominion, or control over the premises?

19 A. No, sir.

20 Q. Do you have any evidence whether Mr. Horta had
21 ownership, dominion, or control over the scales?

22 A. No, sir.

23 Q. Do you have any evidence whether Mr. Horta knew about
24 the gun?

25 A. No, sir.

1 Q. Do you have any evidence whether Mr. Horta knew about
2 the scales?

3 A. No, sir.

4 MR. O'SHEA: That's all I have, Your Honor.

5 THE COURT: Let me ask you specifically about
6 Mr. Horta.

7 What was his -- what did you learn his role to be in
8 the conspiracy?

9 THE WITNESS: To my understanding -- I never spoke
10 to Mr. Horta, another agent did, more because of the language
11 barrier, but it's my understanding that he was somebody that
12 was just selling methamphetamine for Mr. Gomez and Mr. Orozco,
13 and he also lived with Mr. Gomez and Mr. Nunez where a large
14 quantity of methamphetamine and large amount of cash was
15 discovered.

16 THE COURT: He did what? I'm sorry?

17 THE WITNESS: He lived --

18 THE COURT: He also did something.

19 THE WITNESS: Yeah. He lived with Mr. Gomez and
20 Mr. Nunez in another apartment and -- where a large amount of
21 methamphetamine and a large amount of U.S. currency was
22 located.

23 THE COURT: Well, did you have any sense as to how
24 often Mr. Horta might be at the -- is it the Cockrell Hill
25 apartment?

1 THE WITNESS: I believe he would be over there only
2 under the direction or probably with Mr. Gomez or Mr. Orozco.

3 THE COURT: Okay. Thank you.

4 Okay. Let's see. Does Mr. Nunez have any questions
5 of this witness?

6 MR. DURDEN: Yes, Your Honor. May it please the
7 Court.

8 THE COURT: Yes.

9 **CROSS-EXAMINATION**

10 **BY MR. DURDEN:**

11 Q. Officer Brantley, would you say the same thing about
12 defendant Nunez, that he would only be present in the Cockrell
13 Hills apartment if he were there under the direction or
14 control of Orozco or Gomez?

15 A. Yes, sir.

16 Q. Okay. Now, you mentioned the apartment in which
17 Mr. Nunez lived. There was a large amount of methamphetamine
18 and cash in that apartment; is that correct?

19 A. Correct.

20 Q. There were no firearms in that apartment, were there?

21 A. No.

22 Q. Now, the firearm in question was present at the
23 Cockrell Hills apartment in a drawer of a dresser; is that
24 correct?

25 A. Nightstand, yes.

1 Q. Okay, of a nightstand, okay. Then is it fair to say
2 that the handgun was not in plain view?

3 A. No, sir.

4 Q. I'm sorry, I asked that bad. Is it --

5 THE COURT: If it's in a drawer, it's not in plain
6 view. Let's don't play games. Let's go on.

7 Q. Now, Mr. Nunez made a full statement at the time of
8 his arrest; is that correct?

9 A. Yes, sir.

10 Q. Now, do you have any evidence that he was untruthful
11 in his statement?

12 A. No, sir. As with Mr. Horta, I did not speak to him
13 because of the language barrier, but it's to my knowledge that
14 what he said, yes, he was being truthful.

15 Q. Now, you and I spoke along with Mr. Burgess prior to
16 the hearing today, and it's my understanding that as far as
17 his debriefing and Mr. Nunez's statements, the Government has
18 no complaint as far as his truthfulness, but as far as safety
19 valve, the only issue is whether there would be constructive
20 possession of the gun; is that correct?

21 A. Correct.

22 Q. Okay. Now, did Mr. Nunez have a key to that
23 apartment at Cockrell Hills?

24 A. Not to my knowledge.

25 Q. Was Mr. Nunez an occupant of that apartment at

1 Cockrell Hills?

2 A. No, sir.

3 Q. Okay. Now, the -- the scales that were present in
4 that drawer with the nightstand, were they the digital scales,
5 or were they mechanical scales? What kind of scales were
6 they?

7 A. They were digital scales.

8 Q. Okay. And were there scales found in the apartment
9 where Mr. Nunez lived?

10 A. I don't recall if there were.

11 Q. Okay. But there was the -- the methamphetamine, the
12 cash, and the other tools of the trade were over there with
13 Mr. Nunez?

14 A. Correct.

15 Q. Okay. Now, you may not recall it per se, but I mean,
16 you -- with -- can you tell the Court whether or not you can
17 testify directly whether or not there were not scales with
18 Mr. Nunez?

19 A. I don't quite understand.

20 THE COURT: I think he's answered that question
21 about every way he can. Let's don't ask it again.

22 Q. Okay. Well, scales are pretty common in --

23 THE COURT: Let's don't go into that again,
24 Mr. Durden. I just told you, let's move onto something else.
25 He's already talked about the scales, and he's answered every

1 question that reasonably could be expected to answer. Go on
2 to something else.

3 Q. Is it your testimony that that's the only set of
4 scales that had --

5 THE COURT: Mr. Durden, do you want to be held in
6 contempt of court?

7 MR. DURDEN: No, Your Honor.

8 THE COURT: You're heading in that direction.

9 Q. All right. Do you have any -- okay. As far as the
10 contents of that drawer of the nightstand, do you have any
11 evidence of how long those contents were in that drawer?

12 A. No, sir, I don't.

13 Q. Do you have any evidence that those contents of that
14 drawer were there when Mr. Nunez was in the apartment?

15 A. No, sir.

16 Q. Okay. Now, when I say the contents of the drawer,
17 I'm of course referring to the handgun and/or the scales?

18 A. Correct.

19 Q. Thank you. Do you have any evidence that Mr. Nunez
20 exercised ownership, dominion, or control over the handgun?

21 A. I do not.

22 Q. And do you have any evidence that he has been less
23 than truthful in debriefing and speaking to the agents in this
24 case?

25 A. Not to my knowledge.

1 MR. DURDEN: Thank you, Your Honor. I'll pass the
2 witness.

3 THE COURT: Okay. Did you have any further
4 questions you want you wanted to ask?

5 MR. BURGESS: Not on the issue of the gun, no, Your
6 Honor. I do have the issue on the 5K for Ms. Rosales, but --

7 THE COURT: Okay. Let's deal with the gun issue
8 before we come back and do that. Why don't you just stay
9 right now, if you don't mind, and let's deal with the gun
10 issue.

11 Okay. Let's go back to Mr. Gomez. Do you have any
12 statement you want to make or anything else you want to offer
13 on the subject of whether your client should be given a safety
14 valve, Mr. De La Garza?

15 MR. DE LA GARZA: Your Honor, the only statement I
16 would like to make, if it pleases the Court, is on the issue
17 of constructive possession.

18 If you look at the Fifth Circuit Pattern Jury
19 Charge, Your Honor, part of constructive possession is there
20 is two additional elements in the Fifth Circuit Pattern Jury
21 Charge for constructive possession, Your Honor, which is
22 intent and knowledge.

23 There has to be evidence to show that they had
24 knowledge of the firearm, that they had intent to control that
25 firearm, and we're just saying, Your Honor, based upon all of

1 the evidence we've heard here, there is a lack -- we're not
2 contesting any of the evidence that's been presented, I'm
3 just --

4 *THE INTERPRETER:* Excuse me, Your Honor, sorry.
5 We're having interpreter equipment difficulties. One of
6 the --

7 *THE COURT:* Okay. Let's stop just a minute while we
8 work that out.

9 (Pause in proceedings).

10 *THE COURT:* Are you okay on the equipment?

11 *THE INTERPRETER:* The bailiff is getting another
12 headset.

13 *COURT SECURITY OFFICER:* We have to get another one.

14 (Pause in Proceedings)

15 *THE INTERPRETER:* We're good to go, Your Honor.

16 *THE COURT:* Okay. Is everybody okay on the
17 interpreting?

18 Okay. You may proceed, Mr. Perez (sic).

19 *MR. DE LA GARZA:* Mr. De La Garza, Your Honor.

20 Briefly, I'll just address the Court on the issue of
21 constructive possession. It's our position, Your Honor, that
22 there were two additional elements on constructive possession,
23 Your Honor, that haven't been taken into consideration.
24 Number one --

25 *THE COURT:* Intent and knowledge, I believe you

1 said.

2 *MR. DE LA GARZA:* That's correct, Your Honor.
3 That's all we have, and we don't believe that's here, Your
4 Honor.

5 *THE COURT:* Okay. Well, I find from a preponderance
6 of the evidence that your defendant did have constructive
7 possession of the firearm, if not actual possession; that you
8 can reasonably infer from his access and degree of control
9 over the apartment where the firearm was located that he did
10 have knowledge and control of the firearm, perhaps jointly
11 along with the others, so I'll overrule your objection.

12 *MR. DE LA GARZA:* Okay.

13 *THE COURT:* Okay. Mr. -- let's see who was next.
14 Okay. Mr. Perez. I think I misspoke a minute ago and called
15 Mr. De La Garza Mr. Perez.

16 But Mr. Perez, do you have anything you want to say?

17 *MR. PEREZ:* I do, Your Honor. Shall I address both
18 issues?

19 *THE COURT:* Yes.

20 *MR. PEREZ:* Okay. Regarding the constructive
21 possession of the firearm, I think we can concede that there
22 was constructive possession. In fact, that's why we withdrew
23 our first objection. I think what's important to note is that
24 a person who constructively possesses a firearm is ineligible
25 for a safety valve, but a defendant or person who is unaware

1 of the firearm cannot constructively possess it, and the
2 testimony of the investigator was that really no one knew.

3 There's no statement made by my client or any of the
4 co-defendants that my client knew. There were no fingerprints
5 on the gun. The gun was not in his name. I don't know
6 if -- there is no evidence of him having searched anything and
7 the gun was not in his name. And again, I do adopt the other
8 arguments made by Mr. De La Garza.

9 Now, regarding the issue of truthfulness, initially
10 the -- my client was not said to be truthful because he
11 was -- he had provided information. I believe there were some
12 inconsistencies in what he provided. He was called on that by
13 the investigator, and then my client did what he has a
14 Constitutional right to do, he asked for an attorney.

15 After that, Your Honor, we did debrief on
16 June 23rd and it's -- any past lies or omissions don't
17 disqualify a defendant who ultimately tells the truth before
18 sentencing.

19 I talked to the investigator and I also spoke with
20 Mr. Burgess, and Mr. Burgess would confirm this, and I wrote
21 down exactly what their --

22 *THE COURT:* Well, I heard what the witness said and
23 the witness said your client didn't make what he thought would
24 be a full disclosure of information he had.

25 *MR. PEREZ:* Well, let me say --

1 *THE COURT:* And I find that. Now, if you have
2 something else you want to say, that's fine, but I find that
3 he didn't make a full disclosure of information that he had.

4 *MR. PEREZ:* I do, Your Honor, want to say something
5 else, and you can resolve whether he -- which is -- which is
6 correct. And this is something he talked to Mr. Burgess about
7 and they both, in my presence, admitted to, and that was that
8 my client admitted to the manufacture and sale of
9 methamphetamine --

10 *THE COURT:* Well, the witness is providing the
11 information I'm relying on. Mr. Burgess hadn't testified.

12 *MR. PEREZ:* Well, the first questions I asked this
13 witness were exactly what my statements are.

14 *THE COURT:* Mr. Perez, we've heard the witness'
15 testimony. We can't -- you can't change that, and his
16 testimony is that your client didn't make the kind of
17 disclosure that your client should have made.

18 And the Government has not informed the Court that
19 your client has made a full disclosure, the kind of disclosure
20 that would authorize him to get a two level -- to get the
21 safety valve.

22 *MR. PEREZ:* Well, with all due respect --

23 *THE COURT:* Do you have anything else you want to
24 say? Let's don't keep going over that same subject.

25 *MR. PEREZ:* Well, I don't mean to belabor the point.

1 THE COURT: Well, let's don't.

2 MR. PEREZ: Then Mr. Burgess will confirm what
3 Mr. Brantley testified to in the first few questions that I
4 asked him regarding my client's role and his honesty and that
5 he was honest regarding his offense conduct.

6 THE COURT: Okay. Okay. I find -- I overrule your
7 client's objection to not receiving the safety valve for two
8 reasons: The Government has not informed the Court that your
9 client has provided a level of cooperation and information
10 that would cause the Government to provide the Court with that
11 information.

12 Plus I also find that there is a reasonable
13 inference that can be drawn from the evidence that your client
14 had actual knowledge and control over the firearm that was
15 found in the apartment. At the very least, it establishes
16 that he had constructive knowledge. He had ready access to
17 the apartment and had the constructive possession that goes
18 along with having that access.

19 In addition to the fact that it reasonably can be
20 inferred from the fact that the scales were in there, that
21 those that were involved in the distribution of the drugs from
22 that apartment would have knowledge of the firearm because of
23 their close proximity to the scales in the drawer, and
24 presumably the scales were used for drug distribution
25 purposes, the purposes for which those people were using the

1 apartment, so I'll overrule your objection.

2 MR. BURGESS: Your Honor, may I be briefly heard?

3 THE COURT: Yes.

4 MR. BURGESS: Since my name has been brought up
5 here. The position of the Government has been, as far as
6 safety valve on this defendant, as the Court has noted, that
7 because of the firearm, the defendant doesn't qualify for
8 safety valve.

9 I do want to clarify though that early in our
10 discussions between myself and Mr. Brantley, I asked his
11 position on whether or not the defendant had been fully
12 truthful and the answer, as he testified today, was, no, I
13 don't think that he's given everything out there.

14 But I do want to be clear, as I think Mr. Perez was
15 trying -- was attempting to make the point with the witness,
16 that as it referred to the questions that were asked of him
17 about the very finite area of this conspiracy, we do believe
18 he was truthful, but the question is whether or not he was
19 truthful when asked about, for example, the source of supply
20 and those sorts of things.

21 I think the Court's ruling -- I'm not objecting to
22 the Court's ruling. I think that he doesn't qualify for
23 safety valve, but I did want to state the Government's
24 position on that.

25 THE COURT: I think Mr. Perez adequately developed

1 what you just said through the witness.

2 MR. BURGESS: Thank you, Your Honor.

3 THE COURT: I understood what you just related.

4 Okay. You can be seated, Mr. Perez.

5 MR. PEREZ: All right.

6 THE COURT: Now, as far as defendants Horta and
7 Nunez are concerned, I think it's a close enough question as
8 to their use of the apartment and their connection with the
9 apartment that I'm inclined to give them the benefit of the
10 doubt, though I think the probation officer was perfectly
11 legitimate in doing what the probation officer did.

12 I'm inclined to give them the benefit of the doubt
13 that perhaps their connection with the apartment was such that
14 they would not have had sufficient knowledge of the presence
15 of the firearm to be held accountable for it for safety valve
16 purposes, unless the Government has some other statement it
17 wishes to make on that.

18 MR. BURGESS: I don't, Your Honor. On Nunez,
19 however, it's also that the Government would agree with the
20 defense counsel that his denial of knowledge of the gun would
21 not result in his withdrawal of acceptance. And so right now
22 the recommendation of probation is that he also not only
23 receive -- not get safety valve, but that he also not get
24 acceptance.

25 THE COURT: I think that necessarily follows from

1 what I've said.

2 MR. BURGESS: Thank you, Your Honor.

3 THE COURT: Okay. Okay. So I'm sustaining the
4 objections of Horta and Nunez to the extent that I've
5 indicated, and so we'll need some recalculation as to those
6 two defendants.

7 Was there anything else you wanted to say,
8 Mr. -- let me get my lawyers -- Mr. O'Shea?

9 MR. O'SHEA: No, Your Honor.

10 THE COURT: Or Mr. Durden?

11 MR. DURDEN: No, Your Honor.

12 THE COURT: Okay. Okay. Let me call -- while we're
13 doing some recalculating there, have I dealt with everybody?
14 You can step down.

15 MR. BURGESS: Your Honor, we still had the 5K issue.

16 THE COURT: Oh, yeah, that's right. Why don't we
17 deal with the other defendants and come back to that.

18 MR. BURGESS: Yes, Your Honor.

19 THE COURT: I'll put her last.

20 MR. BURGESS: Do you want the witness to step down?

21 THE COURT: You can step down.

22 Okay. Let me call the defendants back one by one.

23 MR. DANIELSON: Your Honor, would you like
24 Ms. Rosales to go back to the jury box?

25 THE COURT: Probably be a good idea.

1 (Proceedings continue for defendant Orozco-Lopez
2 only, as follows:)

3 *THE COURT:* Okay. I'll call back now defendant Jose
4 Julian Orozco-Lopez and his attorney Mr. Perez.

5 Okay. There being no further objections to the
6 presentence report in the case of defendant Jose Julian
7 Orozco-Perez (sic), the Court adopts as the fact findings of
8 the Court the facts set forth in the presentence report as
9 modified or supplemented by the addendum, and any facts I've
10 found from the bench, and the Court adopts as the conclusions
11 of the Court the conclusions expressed in the presentence
12 report as modified or supplemented by the addendum and any
13 conclusions I've expressed from the bench.

14 The Court concludes that the total offense level is
15 41, that the criminal history category is I, that the
16 imprisonment range is 324 to 405 months, that the supervised
17 release range is four to five years, that the fine range is
18 25,000 to \$2 million, and that a special assessment of \$100 is
19 mandatory.

20 You can make whatever statement you would like to
21 make on behalf of your client.

22 *MR. PEREZ:* Thank you. Your Honor, this is
23 regarding our motion for a variance and I wanted to say a few
24 things in my client's behalf.

25 *THE COURT:* I failed to mention, I am denying your

1 motion for variance, but go ahead.

2 MR. PEREZ: Well, then my final arguments would be
3 regarding, the Court could take into consideration my client's
4 age. He's 23 years old. He has been a part of a family and
5 has been a real active part of a family. As you know, his
6 wife is on this conspiracy, but his mother-in-law, his
7 sister-in-law, a preacher are here to stand here in his
8 behalf.

9 Now, when my client got into this business, his
10 father was into it first. And I think it's important to bring
11 out, Your Honor, that my client doesn't blame his father. He
12 takes full responsibility for what he's done, but that kind of
13 parental pressure can have an effect on a young man of 23.
14 His father, in fact, is doing federal time down in Corpus
15 Christi, so that will tell you what kind of nefarious
16 activities he was involved in.

17 Now, the question I have to ask, Your Honor, is what
18 is reasonable? Now, the bottom of the guidelines is about 27
19 years. At 27 years, what can we expect of him when he gets
20 out? He'll be about my age, about 53 years old. And I'm
21 wondering, had it been me or it be me, if I get out 53 years
22 old, I don't know what I can do. And the big difference, Your
23 Honor, is I have opportunity because I live here. My client
24 is going to be deported.

25 And what I would like the Court to take into

1 consideration, Your Honor, is what kind of life, what kind of
2 opportunity he's going to have. If he goes back to Mexico,
3 there is not going to be much opportunity. And if we look at
4 the amount of time that could be proposed, it's not going to
5 be much of a deterrence. I mean, these people in Mexico are
6 mean. They kill people. They don't care. They act like
7 there's no tomorrow, so there's not really going to be any
8 kind of deterrent.

9 My suggestion is, Your Honor, is that if you take a
10 reasonable amount of time off, he at least has the opportunity
11 to have a life in Mexico. For example, rather than 27 years,
12 if it were 20 years, 20 years is long enough in prison to
13 think about, to think about what he did wrong, to start
14 working on a skill, some kind of trade, so when he gets out,
15 he can try to hit the ground running, have his own business,
16 and do something in Mexico.

17 So I would like the Court to take that into
18 consideration, and I appreciate your time.

19 *THE COURT:* Incidentally, I didn't mean to cut you
20 off on the variance. Did you have some evidence you wanted to
21 offer on that subject beyond what I've already heard?

22 *MR. PEREZ:* No, Your Honor.

23 *THE COURT:* Okay. Mr. Orozco-Lopez, you have the
24 right to make any statement or presentation you would like to
25 make on the subject of mitigation, that is, the things you

1 think the Court should take into account in determining what
2 tense to impose, or on the subject of sentencing more
3 generally, and at this time I'll invite you to do that.

4 *DEFENDANT OROZCO-LOPEZ:* First of all, I would just
5 ask Your Honor that you forgive me. I was going along working
6 well, but unfortunately I got involved with persons, people I
7 should not have gotten involved with.

8 The thing is, I really never had the right type of
9 education from my father. I know I did wrong in disobeying
10 the laws of this country. And that's why I would ask if you
11 could, if you give me a reduced sentence so I would be able to
12 get out not too old and be able to set an example for
13 others -- still set an example for others, so they know they
14 are not supposed to disobey the laws of this country.

15 And I would just hope that I would be able to do
16 that and see my mother again.

17 *THE COURT:* Okay. Thank you.

18 *MR. PEREZ:* Thank you, Your Honor. Appreciate it.

19 *THE COURT:* Well, I've combined the sentencing
20 hearing so everybody, all of the defendants and their
21 attorneys have heard what I said when I sentenced Gomez
22 concerning my thoughts on the fact that these sentences are
23 lengthy sentences, but I think they are appropriate sentences
24 considering the nature of the conduct the parties have been
25 involved in, and the deterrence effect the sentences might

1 have on causing others to give second thought before engaging
2 in that conduct.

3 So I'll adopt what I've said at the sentencing of
4 Gomez that would be applicable here. My intent is to impose a
5 sentence at the bottom of the advisory guideline range of 324
6 months, combined with a term of supervised release of four
7 years to commence when the defendant gets out of prison, plus
8 payment of a special assessment of \$100.

9 In my view, that sentence -- such a sentence will
10 adequately and appropriately address all of the factors the
11 Court should consider under 18 United States Code Section
12 3553(a) and is a reasonable sentence that would accomplish the
13 Court's objectives of punishment, deterrence, and protection
14 of the public.

15 So the Court is ordering and adjudging that the
16 defendant be committed to the custody of the Bureau of Prisons
17 to serve a term of imprisonment of 324 months. I'm further
18 ordering that the defendant serve a term of supervised release
19 of four years to start when he gets out of prison.

20 The conditions of that supervised release will be
21 the standard conditions that will be set forth in the judgment
22 of conviction and sentence.

23 Plus, pursuant to 18 United States Code Section
24 3583(d), as one of the conditions of supervised release, once
25 the defendant completes his sentence of imprisonment, he shall

1 be surrendered by the Bureau of Prisons to a duly authorized
2 immigration official for deportation in accordance with the
3 established procedures provided by the Immigration and
4 Nationality Act. As a further condition of supervised
5 release, if the defendant is ordered deported, he shall remain
6 outside the United States.

7 Now, in the event the defendant is not deported
8 immediately upon release from imprisonment, or should he ever
9 be within the United States during any portion of his term of
10 supervised release, he'll comply with the standard conditions
11 that have previously been mentioned and the following
12 additional conditions:

13 He shall not possess illegal controlled substances.

14 He shall not commit another federal, state, or local
15 crime.

16 He shall cooperate in the collection of DNA as
17 directed by the probation officer.

18 He shall refrain from any unlawful use of a
19 controlled substance and shall submit to one drug test within
20 15 days of release from imprisonment and at least two periodic
21 drug tests thereafter as directed by the probation officer.

22 I'm also ordering the defendant pay a special
23 assessment of \$100. That's payable immediately to the United
24 States of America through the office of the United States
25 Clerk.

1 Mr. Orozco-Lopez, you have the right to appeal from
2 the sentence I've imposed if you are dissatisfied with it.
3 That appeal would be to the United States Court of Appeals for
4 the Fifth Circuit. You have the right to appeal in forma
5 pauperis, that means without any cost to you if you qualify
6 for it. You have the right to have the clerk of the court
7 file a notice of appeal for you and the clerk will do that
8 forthwith if you were to specifically request it.

9 You and your attorney have been given a form that
10 outlines certain rights and obligations in reference to an
11 appeal. If you haven't already done so, I want the two of you
12 to review it. Once both of you have and you're satisfied you
13 understand it, I want both of you to sign it and return it to
14 the court coordinator.

15 Has that been done, Mr. Perez?

16 MR. PEREZ: Yes, Your Honor.

17 THE COURT: Okay. The defendant is remanded to
18 custody and the attorneys are excused.

19 Okay. We're going to take a 15-minute recess and
20 we'll resume with the sentencings.

21 COURT SECURITY OFFICER: All rise.

22 (Recess).

23 (End of Proceedings).
24
25

REPORTER'S CERTIFICATE

I, Debra G. Saenz, CSR, RMR, CRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 10th day of October, 2010.

/s/ Debra G. Saenz

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1	76180 [1] 2/2	although [1] 7/16
100 percent [1] 22/10	8	am [2] 11/17 39/25
1000 [1] 1/19	801 [1] 1/16	AMERICA [2] 1/4 44/24
1015 [1] 2/5	817.252.5200 [1] 1/17	American [1] 22/12
106 [1] 1/23	817.581.9900 [1] 2/3	amount [7] 18/25 25/14 25/20 25/21 26/17 41/4 41/10
10th [3] 2/14 46/8 46/16	817.845.3790 [1] 1/24	amounts [2] 18/15 18/16
11 [2] 3/4 46/15	817.850.6661 [2] 2/15 46/18	and -- y'all [1] 8/23
12/31/11 [1] 46/15	9	And do [1] 5/3
13 [2] 1/6 4/2	9:00 [2] 1/9 4/2	and/or [1] 29/17
130 [1] 2/2	A	another [7] 20/6 21/3 25/10 25/20 31/11 31/13 44/14
15 [1] 44/20	a -- not [1] 15/19	answer [2] 29/1 36/12
15-minute [1] 45/19	a.m [2] 1/9 4/2	answered [2] 28/20 28/25
15th [1] 2/5	abandoned [1] 8/15	answers [1] 21/12
17 [1] 3/5	able [4] 9/5 42/11 42/12 42/15	any [44] 7/11 9/9 9/15 9/23 10/20 11/5 13/6 13/17 15/9 15/9 17/12 17/16 17/22 17/25 18/17 18/20 19/5 22/5 24/10 24/14 24/17 24/20 24/23 25/1 25/23 26/4 27/10 29/9 29/10 29/13 29/19 29/22 30/3 30/11 31/2 33/3 33/16 39/9 39/12 41/7 41/24 44/9 44/18 45/5
1700 [1] 1/16	about [29] 7/10 10/12 13/14 19/8 19/13 20/5 20/19 21/8 21/13 23/5 23/6 23/9 23/12 23/13 23/20 24/23 25/1 25/5 26/11 28/21 28/25 34/6 36/17 36/19 40/18 40/20 40/20 41/13 41/13	any -- okay [1] 29/9
18 [2] 43/11 43/23	acceptance [6] 9/22 9/24 10/4 10/24 37/21 37/24	anybody [1] 18/24
2	access [7] 14/15 14/20 15/6 20/3 32/8 35/16 35/18	anything [7] 10/7 13/2 30/12 32/16 33/6 34/23 38/7
20 [2] 41/12 41/12	access [7] 14/15 14/20 15/6 20/3 32/8 35/16 35/18	apartment [29] 13/18 14/1 14/12 14/16 14/25 15/7 15/10 16/2 17/7 18/18 25/20 25/25 26/13 26/16 26/18 26/20 26/23 27/23 27/25 28/8 29/14 32/9 35/15 35/17 35/22 36/1 37/8 37/9 37/13
20 kilos [1] 21/17	accomplish [1] 43/12	apparently [2] 4/12 5/19
2010 [6] 1/6 4/2 5/7 6/16 22/25 46/8	accomplished [1] 9/11	appeal [5] 45/1 45/3 45/4 45/7 45/11
214.537.1475 [1] 2/10	accordance [1] 44/2	Appeals [1] 45/3
214.740.1708 [1] 2/6	account [1] 42/1	appeared [2] 5/6 6/16
214.752.0505 [1] 1/20	accountable [1] 37/15	appears [1] 11/2
22 [1] 3/5	acknowledge [2] 10/2 13/7	applicable [2] 8/11 43/4
23 [2] 40/4 40/13	act [2] 41/6 44/4	appreciate [2] 41/18 42/18
23rd [2] 22/25 33/16	active [1] 40/5	appropriate [1] 42/23
24 [1] 3/6	activities [1] 40/16	appropriately [1] 43/10
25,000 [1] 39/18	actual [5] 8/19 20/1 20/2 32/7 35/14	are [24] 5/9 5/19 7/10 8/11 8/17 8/21 9/7 9/14 10/15 10/25 11/16 14/22 19/17 28/22 31/10 34/13 37/7 40/7 41/5 42/14 42/22 42/23 45/2 45/18
26 [1] 3/6	actually [6] 10/3 10/12 13/19 14/1 21/4 21/16	area [1] 36/17
27 [3] 40/18 40/19 41/11	actually -- whether [1] 21/16	argue [1] 20/5
3	addendum [5] 6/23 7/8 10/19 39/9 39/12	Argument [2] 3/8 3/10
30 [1] 3/8	addition [3] 19/7 20/23 35/19	arguments [2] 33/8 40/2
3158 [1] 46/11	additional [3] 30/20 31/22 44/12	arrest [1] 27/8
32 [2] 3/8 3/10	address [11] 7/15 7/17 7/23 7/25 19/10 19/21 31/20 32/17 43/10 46/16 46/19	as [61]
324 [3] 39/16 43/5 43/17	addressed [1] 19/20	ask [13] 11/5 13/12 19/9 20/6 20/17 21/11 21/13 25/5 28/21 30/4 40/17 42/5 42/10
330 [1] 2/9	adequately [2] 36/25 43/10	
35 [1] 3/10	adjudging [1] 43/15	
3553 [1] 43/12	admit [1] 20/24	
3583 [1] 43/24	admitted [4] 20/20 20/21 34/7 34/8	
37 [1] 3/12	adopt [2] 33/7 43/3	
39 [2] 3/14 3/15	adopts [2] 39/7 39/10	
4	advice [2] 10/5 10/10	
400 [1] 1/19	advised [2] 10/9 21/10	
405 [1] 39/16	advisory [1] 43/5	
41 [1] 39/15	affiliated [2] 22/16 22/16	
42 [4] 3/16 3/17 3/18 3/18	after [4] 10/14 10/18 10/19 33/15	
424 [2] 2/14 46/16		
46 [1] 3/21		
47 [1] 3/22		
4:10-CR-050-A [2] 1/4 4/4		
5		
501 [2] 2/14 46/16		

<p>A</p> <p>asked [9] 13/14 23/20 27/4 33/14 34/12 35/4 36/10 36/16 36/19</p> <p>asking [3] 18/5 19/7 23/4</p> <p>aspect [1] 7/21</p> <p>assessment [3] 39/18 43/8 44/23</p> <p>association [1] 22/15</p> <p>attempting [1] 36/15</p> <p>attorney [4] 6/17 33/14 39/4 45/9</p> <p>attorneys [3] 8/12 42/21 45/18</p> <p>AUGUST [3] 1/6 4/2 22/25</p> <p>August -- I'm [1] 22/25</p> <p>authorize [2] 20/11 34/20</p> <p>authorized [1] 44/1</p> <p>available [1] 17/12</p>	<p>20/18 27/15 33/20 33/20 34/6 34/11 35/2</p> <p>business [3] 40/9 41/15 46/16</p> <p>but -- and [1] 15/15</p> <p>C</p> <p>call [6] 4/3 8/6 9/2 38/12 38/22 39/3</p> <p>called [2] 32/14 33/12</p> <p>can [34] 5/10 5/11 5/12 5/14 6/4 6/4 6/5 6/5 8/5 8/23 9/16 11/6 18/4 19/22 20/3 20/15 20/19 23/23 28/16 28/16 28/21 32/8 32/21 34/5 35/13 35/19 37/4 38/14 38/21 39/20 40/13 40/19 40/22 41/15</p> <p>can't [2] 34/15 34/15</p> <p>can't -- you [1] 34/15</p> <p>cannot [2] 17/4 33/1</p> <p>care [3] 14/2 18/1 41/6</p> <p>cartel [2] 22/6 22/13</p> <p>case [15] 1/4 3/13 3/19 3/19 4/4 4/13 4/20 6/18 10/11 11/23 21/6 23/6 23/7 29/24 39/6</p> <p>cases [2] 3/4 4/13</p> <p>cash [3] 25/14 26/18 28/12</p> <p>category [1] 39/15</p> <p>cause [1] 35/10</p> <p>causing [1] 43/1</p> <p>certain [1] 45/10</p> <p>Certificate [2] 3/21 46/1</p> <p>certify [2] 46/2 46/5</p> <p>change [1] 34/15</p> <p>charge [3] 14/13 30/19 30/21</p> <p>charged [1] 6/17</p> <p>Cherry [1] 1/16</p> <p>Christi [3] 21/7 23/2 40/15</p> <p>Circle [1] 1/23</p> <p>Circuit [3] 30/18 30/20 45/4</p> <p>City [1] 11/18</p> <p>clarify [1] 36/9</p> <p>clear [1] 36/14</p> <p>clerk [3] 44/25 45/6 45/7</p> <p>client [36] 4/16 5/11 6/22 6/25 7/19 8/4 8/5 8/5 8/24 10/20 10/24 17/23 19/24 19/25 20/9 20/21 23/1 23/1 23/10 24/1 30/13 33/3 33/4 33/10 33/13 33/23 34/8 34/16 34/17 34/19 35/9 35/13 39/21 40/9 40/11 40/23</p> <p>client's [6] 10/1 20/19 35/4 35/7 39/24 40/3</p> <p>close [2] 35/23 37/7</p> <p>co [2] 10/22 33/4</p> <p>co-defendants [2] 10/22 33/4</p> <p>Cockrell [6] 12/1 25/24 26/12 26/23 27/23 28/1</p> <p>Code [2] 43/11 43/23</p> <p>collection [1] 44/16</p> <p>combined [2] 42/19 43/6</p> <p>come [5] 8/1 8/3 17/7 30/8 38/17</p> <p>commence [1] 43/7</p> <p>commit [1] 44/14</p> <p>committed [1] 43/16</p> <p>common [3] 14/23 15/11 28/22</p> <p>complaint [1] 27/18</p> <p>completes [1] 43/25</p> <p>comply [2] 44/10 46/6</p> <p>computer [1] 2/19</p> <p>concede [1] 32/21</p> <p>concerned [1] 37/7</p> <p>concerning [1] 42/22</p> <p>concludes [1] 39/14</p> <p>conclusion [3] 7/9 24/1 24/4</p> <p>conclusions [3] 39/10 39/11 39/13</p> <p>condition [1] 44/4</p> <p>conditions [5] 43/20 43/21 43/24 44/10</p>	<p>44/12</p> <p>conduct [4] 20/34 35/5 42/24 43/2</p> <p>conducted [1] 12/24</p> <p>Conference [1] 46/7</p> <p>confirm [2] 33/20 35/2</p> <p>connected [2] 22/5 23/5</p> <p>connection [3] 13/3 37/8 37/13</p> <p>consider [2] 7/18 43/11</p> <p>consideration [5] 19/22 31/23 40/3 41/1 41/18</p> <p>considering [1] 42/24</p> <p>conspiracy [8] 6/18 20/22 20/25 23/5 23/5 25/8 36/17 40/6</p> <p>Constitutional [1] 33/14</p> <p>constructive [13] 8/20 20/1 27/19 30/17 30/19 30/21 31/21 31/22 32/6 32/20 32/22 35/16 35/17</p> <p>constructively [2] 32/24 33/1</p> <p>contact [1] 23/17</p> <p>containers [1] 16/18</p> <p>contempt [1] 29/6</p> <p>contents [4] 29/10 29/11 29/13 29/16</p> <p>contesting [1] 31/2</p> <p>continue [2] 8/7 39/1</p> <p>control [10] 18/1 24/15 24/18 24/21 26/14 29/20 30/24 32/8 32/10 35/14</p> <p>controlled [3] 6/19 44/13 44/19</p> <p>convert [1] 16/12</p> <p>converted [1] 16/6</p> <p>conviction [2] 6/20 43/22</p> <p>cook [1] 16/5</p> <p>cooperate [1] 44/16</p> <p>cooperation [1] 35/9</p> <p>coordinator [1] 45/14</p> <p>Corpus [3] 21/6 23/2 40/14</p> <p>correct [15] 11/20 12/19 21/25 23/3 26/18 26/19 26/24 27/8 27/20 27/21 28/14 29/18 32/2 34/6 46/3</p> <p>cost [1] 45/5</p> <p>could [9] 5/22 19/25 21/10 22/14 23/21 29/1 40/3 41/4 42/11</p> <p>couldn't [1] 21/23</p> <p>counsel [1] 37/20</p> <p>count [1] 6/18</p> <p>country [2] 42/10 42/14</p> <p>couple [1] 14/10</p> <p>course [5] 6/19 12/13 12/20 13/6 29/17</p> <p>court [33] 1/1 1/12 2/14 3/17 7/23 8/15 10/12 19/22 26/7 28/16 29/6 30/16 31/20 34/18 35/8 35/10 36/6 39/7 39/8 39/10 39/11 39/14 40/3 40/25 41/17 42/1 43/11 43/15 45/3 45/6 45/14 46/6 46/12</p> <p>Court's [8] 3/8 3/10 3/12 3/14 3/18 36/21 36/22 43/13</p> <p>courtroom [6] 4/24 8/12 11/19 13/13 17/13 22/12</p> <p>cover [1] 16/16</p> <p>CR [2] 1/4 4/4</p> <p>credible [1] 10/23</p> <p>crime [1] 44/15</p> <p>criminal [1] 39/15</p> <p>Cross [8] 3/5 3/5 3/6 3/6 17/19 22/23 24/12 26/9</p> <p>Cross-Examination [8] 3/5 3/5 3/6 3/6 17/19 22/23 24/12 26/9</p> <p>CRR [3] 2/14 46/2 46/11</p> <p>crystalize [1] 16/19</p> <p>crystals [1] 12/10</p> <p>CSR [5] 2/14 46/2 46/11 46/11 46/15</p> <p>currency [1] 25/21</p> <p>custody [3] 18/1 43/16 45/18</p> <p>cut [1] 41/19</p>
<p>B</p> <p>back [10] 8/1 8/3 8/4 30/8 30/11 38/17 38/22 38/24 39/3 41/2</p> <p>bad [1] 27/4</p> <p>bailiff [1] 31/11</p> <p>barely [1] 16/15</p> <p>barrier [2] 25/11 27/13</p> <p>based [7] 6/20 8/16 8/18 10/5 17/21 22/1 30/25</p> <p>be [62]</p> <p>because [9] 7/17 10/1 18/15 25/10 27/13 33/10 35/22 36/7 40/23</p> <p>bedroom [3] 13/1 13/16 13/18</p> <p>been [19] 4/20 11/11 11/19 14/12 16/3 16/4 29/22 31/2 31/23 36/4 36/5 36/11 40/4 40/5 40/21 42/24 44/11 45/9 45/15</p> <p>before [11] 1/12 5/6 6/16 8/15 9/9 9/23 10/15 16/22 30/8 33/17 43/1</p> <p>beforehand [1] 5/23</p> <p>begin [1] 5/22</p> <p>behalf [3] 39/21 39/24 40/8</p> <p>being [12] 9/4 9/10 12/3 12/4 12/5 12/7 15/15 15/18 21/24 22/18 27/14 39/5</p> <p>being -- how [1] 12/3</p> <p>belabor [1] 34/25</p> <p>believe [21] 5/11 10/12 13/4 14/2 14/21 14/22 15/25 16/3 17/3 18/11 18/19 18/23 21/10 21/11 24/1 24/4 26/1 31/25 32/3 33/11 36/17</p> <p>bench [2] 39/10 39/13</p> <p>benefit [2] 37/9 37/12</p> <p>best [2] 18/21 22/14</p> <p>between [1] 36/10</p> <p>beyond [1] 41/21</p> <p>big [2] 18/16 40/22</p> <p>biggest [1] 23/8</p> <p>bit [2] 15/12 23/7</p> <p>blame [1] 40/11</p> <p>blanks [1] 21/14</p> <p>boil [1] 16/16</p> <p>both [7] 8/22 15/6 21/19 32/17 34/7 45/12 45/13</p> <p>bottom [2] 40/18 43/5</p> <p>box [1] 38/24</p> <p>boyfriend [1] 14/23</p> <p>boyfriend/girlfriend [1] 14/23</p> <p>BRANTLEY [12] 3/4 4/14 9/3 11/5 11/10 11/15 17/21 20/19 24/14 26/11 35/3 36/10</p> <p>BRIAN [2] 2/8 2/8</p> <p>briefly [3] 17/17 31/20 36/2</p> <p>bring [2] 16/16 40/10</p> <p>brought [3] 11/20 21/16 36/4</p> <p>bullets [1] 18/10</p> <p>Bureau [2] 43/16 44/1</p> <p>BURGESS [11] 1/15 3/4 4/10 11/13</p>		

<p>D</p> <p>Case 4:10-cr-00050-A Document 156 Filed 10/13/10 Page 49 of 55 PageID 580</p> <p>daily [2] 15/13 15/13</p> <p>Dallas [2] 1/20 2/9</p> <p>DANIELSON [3] 1/22 1/22 8/23</p> <p>daughter [1] 14/13</p> <p>day [1] 46/8</p> <p>days [1] 44/20</p> <p>de [10] 2/4 2/5 3/5 3/8 17/15 17/20</p> <p>30/14 31/19 32/15 33/8</p> <p>DEA [1] 11/17</p> <p>deal [5] 8/22 9/16 30/7 30/9 38/17</p> <p>dealing [1] 5/25</p> <p>dealt [1] 38/13</p> <p>debbie.saenz [2] 2/16 46/19</p> <p>DEBRA [4] 2/14 46/2 46/10 46/11</p> <p>debrief [3] 23/1 23/12 33/15</p> <p>debriefed [1] 23/1</p> <p>debriefing [2] 27/17 29/23</p> <p>defendant [32] 1/18 1/22 2/1 2/4 2/8</p> <p>3/16 4/4 5/21 5/23 8/19 13/6 16/21 21/6</p> <p>24/9 26/12 32/6 32/25 33/17 36/6 36/7</p> <p>36/11 39/1 39/3 39/6 43/7 43/16 43/18</p> <p>43/25 44/5 44/7 44/22 45/17</p> <p>defendant -- all [1] 16/21</p> <p>defendants [22] 1/9 6/1 8/6 8/7 8/8 8/11</p> <p>9/5 10/22 11/20 12/14 13/13 13/14</p> <p>15/23 16/1 16/22 17/12 33/4 37/6 38/6</p> <p>38/17 38/22 42/20</p> <p>defense [1] 37/20</p> <p>degree [1] 32/8</p> <p>denial [1] 37/20</p> <p>denied [7] 10/1 10/5 10/20 23/11 23/13</p> <p>23/15 23/16</p> <p>denying [2] 10/24 39/25</p> <p>DEPARTMENT [1] 1/15</p> <p>deportation [1] 44/2</p> <p>deported [3] 40/24 44/5 44/7</p> <p>deputy [1] 4/24</p> <p>detective [1] 19/7</p> <p>determined [1] 12/14</p> <p>determining [1] 42/1</p> <p>deterrence [3] 41/5 42/25 43/13</p> <p>deterrent [1] 41/8</p> <p>developed [1] 36/25</p> <p>did [43] 6/22 6/24 7/3 7/22 13/6 14/19</p> <p>15/22 16/1 17/2 17/4 17/6 17/11 18/10</p> <p>18/11 19/8 19/21 19/24 20/1 20/7 20/18</p> <p>21/2 21/9 21/21 23/1 23/6 23/10 25/7</p> <p>25/10 25/16 25/18 25/23 27/12 27/22</p> <p>30/3 32/6 32/9 33/13 33/15 36/23 37/11</p> <p>41/13 41/20 42/9</p> <p>didn't [5] 21/13 33/23 34/3 34/16 41/19</p> <p>difference [1] 40/22</p> <p>difficulties [1] 31/5</p> <p>digital [4] 13/4 18/15 28/4 28/7</p> <p>direct [3] 3/4 11/12 22/16</p> <p>directed [2] 44/17 44/21</p> <p>direction [3] 26/2 26/13 29/8</p> <p>directly [2] 19/21 28/17</p> <p>disclose [1] 21/2</p> <p>disclosure [6] 20/9 33/24 34/3 34/17</p> <p>34/19 34/19</p> <p>discovered [1] 25/15</p> <p>discuss [2] 7/3 10/7</p> <p>discussed [1] 10/11</p> <p>discussion [1] 11/1</p> <p>discussions [1] 36/10</p> <p>Dismiss [1] 3/18</p> <p>DISMISSAL [1] 3/19</p> <p>disobey [1] 42/14</p> <p>disobeying [1] 42/9</p> <p>disqualify [1] 33/17</p>	<p>dissatisfied [1] 45/2</p> <p>distribute [4] 6/19 12/5 15/16 15/20</p> <p>distributed [2] 22/19 22/19</p> <p>distribution [3] 12/18 35/21 35/24</p> <p>DISTRICT [5] 1/1 1/2 1/12 1/16 46/12</p> <p>DIVISION [2] 1/3 46/13</p> <p>DNA [1] 44/16</p> <p>do [58]</p> <p>does [4] 4/16 4/18 24/9 26/4</p> <p>doesn't [4] 7/23 36/7 36/22 40/11</p> <p>doing [3] 37/11 38/13 40/14</p> <p>dominion [4] 24/15 24/18 24/21 29/20</p> <p>don't [31] 4/9 8/1 8/4 8/10 8/13 8/22 9/5</p> <p>9/21 15/25 18/19 18/19 21/9 27/6 28/10</p> <p>28/19 28/21 28/23 29/12 30/8 30/9 32/3</p> <p>33/5 33/16 34/24 34/25 35/1 36/13</p> <p>37/18 38/16 40/22 41/6</p> <p>done [4] 3/19 40/12 45/11 45/15</p> <p>doubt [2] 37/10 37/12</p> <p>down [6] 18/5 33/21 38/14 38/20 38/21</p> <p>40/14</p> <p>drawer [11] 13/5 18/7 19/2 26/23 27/5</p> <p>28/4 29/10 29/11 29/14 29/16 35/23</p> <p>drawn [2] 19/25 35/13</p> <p>dresser [1] 26/23</p> <p>dried [1] 16/18</p> <p>Drive [1] 2/2</p> <p>drug [8] 13/3 14/4 14/6 22/6 22/13</p> <p>35/24 44/19 44/21</p> <p>drugs [4] 22/2 22/18 22/19 35/21</p> <p>dry [2] 16/18 16/20</p> <p>due [1] 34/22</p> <p>duly [2] 11/11 44/1</p> <p>DURDEN [10] 2/1 2/1 3/6 9/23 9/24</p> <p>10/20 26/10 28/24 29/5 38/10</p> <p>during [4] 3/19 12/20 23/12 44/9</p> <p>E</p> <p>E-Mail [2] 2/16 46/19</p> <p>each [8] 5/21 7/4 12/14 13/13 13/14</p> <p>17/1 17/4 21/19</p> <p>earlier [2] 19/20 23/24</p> <p>early [1] 36/9</p> <p>education [1] 42/9</p> <p>effect [4] 15/18 22/12 40/13 42/25</p> <p>effectively [1] 9/10</p> <p>effects [1] 6/1</p> <p>either [5] 10/21 12/9 13/7 21/21 21/24</p> <p>elements [2] 30/20 31/22</p> <p>else [9] 8/17 15/4 28/24 29/2 30/12 34/2</p> <p>34/5 34/23 38/7</p> <p>employed [1] 11/16</p> <p>end [2] 10/18 45/23</p> <p>engaging [1] 43/1</p> <p>English [1] 9/6</p> <p>enough [3] 19/24 37/7 41/12</p> <p>entitled [1] 46/4</p> <p>equipment [4] 5/9 5/10 31/5 31/10</p> <p>established [1] 44/3</p> <p>establishes [1] 35/15</p> <p>event [1] 44/7</p> <p>ever [2] 23/16 44/8</p> <p>every [3] 16/21 28/21 28/25</p> <p>everybody [4] 8/17 31/16 38/13 42/20</p> <p>everybody's [1] 8/15</p> <p>everyone's [1] 20/22</p> <p>everything [1] 36/13</p> <p>evidence [17] 24/14 24/17 24/20 24/23</p> <p>25/1 27/10 29/11 29/13 29/19 29/22</p> <p>30/23 31/1 31/2 32/6 33/6 35/13 41/20</p> <p>exactly [2] 33/21 34/13</p> <p>Examination [10] 3/4 3/5 3/5 3/6 3/6</p> <p>11/12 17/19 22/23 24/12 26/9</p>	<p>example [6] 15/13 18/25 36/19 41/11</p> <p>42/12 42/13</p> <p>except [1] 8/17</p> <p>Excuse [1] 31/4</p> <p>excused [1] 45/18</p> <p>exercise [1] 18/1</p> <p>exercised [1] 29/20</p> <p>existence [3] 10/2 10/20 17/23</p> <p>expect [1] 40/19</p> <p>expected [1] 29/1</p> <p>Expires [1] 46/15</p> <p>expressed [2] 39/11 39/13</p> <p>expressing [1] 7/9</p> <p>extension [1] 22/12</p> <p>extent [1] 38/4</p> <p>F</p> <p>fact [6] 32/22 35/19 35/20 39/7 40/14</p> <p>42/22</p> <p>factors [2] 7/14 43/10</p> <p>facts [2] 39/8 39/9</p> <p>factual [1] 10/8</p> <p>failed [1] 39/25</p> <p>fair [2] 19/25 27/1</p> <p>Familia [4] 22/7 22/9 22/13 22/20</p> <p>family [3] 14/3 40/4 40/5</p> <p>far [7] 15/25 27/16 27/18 27/18 29/9</p> <p>36/5 37/6</p> <p>father [8] 13/19 13/21 14/9 15/21 40/10</p> <p>40/11 40/14 42/9</p> <p>federal [2] 40/14 44/14</p> <p>feel [3] 7/22 7/24 20/20</p> <p>fees [1] 46/5</p> <p>felt [1] 21/1</p> <p>few [3] 19/6 35/3 39/23</p> <p>Fifth [3] 30/18 30/20 45/4</p> <p>FIGUEROA [4] 1/9 2/8 3/12 3/19</p> <p>figured [1] 5/18</p> <p>file [1] 45/7</p> <p>filed [1] 10/12</p> <p>fill [1] 21/14</p> <p>final [1] 40/2</p> <p>find [8] 4/7 19/12 23/10 32/5 34/1 34/2</p> <p>35/6 35/12</p> <p>find -- I [1] 35/6</p> <p>findings [2] 3/14 39/7</p> <p>fine [3] 20/6 34/2 39/17</p> <p>fingerprints [1] 33/4</p> <p>fingers [1] 21/19</p> <p>finite [1] 36/17</p> <p>firearm [28] 7/17 7/23 8/20 10/21 12/23</p> <p>13/2 13/8 13/11 13/14 17/23 18/1 18/8</p> <p>18/8 19/21 20/2 26/22 30/24 30/25 32/7</p> <p>32/9 32/10 32/21 32/24 33/1 35/14</p> <p>35/22 36/7 37/15</p> <p>firearms [2] 19/8 26/20</p> <p>Firm [2] 2/1 2/5</p> <p>first [8] 7/12 11/11 18/8 32/23 34/12</p> <p>35/3 40/10 42/4</p> <p>five [7] 3/4 7/14 8/8 11/20 16/21 19/16</p> <p>39/17</p> <p>following [1] 44/11</p> <p>follows [4] 8/9 11/11 37/25 39/2</p> <p>force [4] 4/14 9/2 11/17 20/15</p> <p>foregoing [2] 46/3 46/4</p> <p>forgive [1] 42/5</p> <p>forgotten [1] 6/11</p> <p>form [3] 12/10 21/23 45/9</p> <p>forma [1] 45/4</p> <p>format [1] 46/5</p> <p>FORT [6] 1/3 1/5 1/17 2/15 46/13 46/16</p> <p>forth [2] 39/8 43/21</p> <p>forthwith [1] 45/8</p>
--	---	--

<p>F</p> <p>forward [2] 8/6 11/20 found [10] 12/23 12/25 13/1 13/4 18/18 18/20 18/22 28/8 35/15 39/10 four [3] 39/17 43/6 43/19 free [1] 15/6 frequently [2] 15/10 17/2 front [1] 19/18 full [7] 4/25 20/9 27/7 33/24 34/3 34/19 40/12 fully [2] 21/2 36/11 further [10] 9/9 9/23 10/11 10/16 24/7 30/3 39/5 43/17 44/4 46/5</p>	<p>37/16 40/4 40/5 41/10 45/15 have [73] haven't [2] 31/23 45/11 having [6] 5/8 11/11 23/17 31/5 33/6 35/18 he [90] he -- which [1] 34/5 he'll [2] 40/20 44/10 he's [9] 4/5 4/12 28/20 28/25 28/25 36/13 40/4 40/12 41/2 heading [1] 29/8 headset [2] 9/7 31/12 hear [3] 5/11 6/5 6/5 heard [7] 19/24 31/1 33/22 34/14 36/2 41/21 42/21 hearing [4] 1/11 9/14 27/16 42/20 held [2] 29/5 37/15 helped [1] 16/8 helpful [1] 23/10 her [3] 14/2 15/21 38/19 here [16] 4/10 4/12 4/19 6/20 13/13 17/12 22/19 23/5 23/7 31/1 32/3 36/5 40/7 40/7 40/23 43/4 Hill [2] 12/1 25/24 Hills [6] 2/2 11/18 26/13 26/23 27/23 28/1 him [23] 5/13 10/9 10/11 10/21 18/5 19/9 20/6 23/15 23/16 23/16 23/17 23/19 23/20 23/20 23/23 23/25 24/6 27/12 33/6 34/20 35/4 36/16 40/19 himself [1] 14/22 his [36] 7/1 7/4 10/5 10/21 14/1 14/6 19/15 20/25 22/8 24/5 25/7 25/7 27/8 27/11 27/17 27/18 32/8 33/5 33/7 34/15 35/4 35/5 36/10 37/20 37/21 39/4 40/5 40/6 40/6 40/7 40/9 40/11 40/14 41/15 43/25 44/9 his -- what [1] 25/7 history [1] 39/15 hit [1] 41/15 honest [2] 20/24 35/5 honesty [1] 35/4 Honor [74] HONORABLE [1] 1/12 hope [1] 42/15 HORTA [16] 1/9 2/8 3/12 3/19 24/9 24/15 24/17 24/20 24/23 25/1 25/6 25/10 25/24 27/12 37/6 38/4 HORTA-FIGUEROA [4] 1/9 2/8 3/12 3/19 how [17] 5/17 6/4 11/16 12/3 12/7 14/19 15/10 16/1 16/7 16/12 17/4 17/6 20/15 21/17 23/5 25/23 29/11 however [1] 37/19</p>	<p>immigration [2] 44/2 44/3 implication [1] 24/2 important [3] 7/17 32/23 40/10 impose [2] 42/2 43/4 imposed [1] 45/2 imprisonment [5] 39/16 43/17 43/25 44/8 44/20 Incidentally [1] 41/19 inclined [2] 37/9 37/12 inconsistencies [1] 33/12 increase [1] 8/16 Index [1] 3/22 indicate [2] 13/3 19/14 indicated [1] 38/5 indictment [1] 6/18 ineligible [1] 32/24 infer [2] 20/3 32/8 inference [2] 19/25 35/13 inferred [1] 35/20 information [12] 10/13 17/22 17/25 21/9 23/8 23/21 33/11 33/24 34/3 34/11 35/9 35/11 informed [2] 34/18 35/8 initially [2] 10/3 33/9 intelligence [1] 17/22 intended [1] 17/25 intent [5] 6/19 30/22 30/24 31/25 43/4 interpret [1] 9/5 interpretation [2] 9/10 9/16 interpreter [6] 2/12 4/17 4/24 5/12 9/4 31/5 interpreters [1] 5/17 interpreting [1] 31/17 interview [1] 10/19 investigation [8] 11/22 11/25 12/13 12/20 13/6 17/21 21/4 22/2 investigator [5] 19/8 20/18 33/2 33/13 33/19 investigators [1] 23/2 invite [1] 42/3 involved [9] 14/4 14/8 21/4 21/6 35/21 40/16 42/6 42/7 42/25 is [80] is -- which [1] 34/5 issue [18] 7/13 7/17 7/24 8/14 8/15 9/21 19/9 19/21 21/15 27/19 30/5 30/6 30/7 30/10 30/16 31/20 33/9 38/15 issues [2] 19/14 32/18 it [84] it's [18] 5/10 7/16 7/16 7/22 11/6 19/19 22/3 25/11 27/5 27/5 27/13 27/16 31/21 33/16 37/7 37/19 40/10 41/4 it's -- any [1] 33/16 items [2] 6/25 7/4 its [1] 13/3</p>
<p>G</p> <p>games [1] 27/6 GARZA [10] 2/4 2/5 3/5 3/8 17/15 17/20 30/14 31/19 32/15 33/8 gave [2] 10/13 21/10 generally [1] 42/3 get [12] 17/6 17/7 23/8 23/25 31/13 34/20 34/20 37/23 37/23 38/8 40/21 42/12 gets [4] 40/19 41/14 43/7 43/19 getting [1] 31/11 Gilberto [1] 22/3 girlfriend [1] 14/23 give [6] 7/18 23/21 37/9 37/12 42/11 43/1 given [3] 30/13 36/13 45/9 go [19] 5/3 8/23 9/9 9/23 10/16 11/4 11/8 13/25 17/7 19/1 22/22 23/18 27/6 28/23 29/1 30/11 31/15 38/24 40/1 goes [2] 35/17 41/2 going [12] 5/21 8/3 19/23 20/5 34/24 40/24 41/2 41/3 41/4 41/7 42/5 45/19 GOMEZ [18] 1/8 2/5 14/18 14/19 14/21 16/7 17/3 17/6 17/23 21/8 25/12 25/13 25/19 26/2 26/14 30/11 42/21 43/4 Gomez' [1] 22/4 gone [1] 16/3 GONZALEZ [3] 2/12 4/19 5/18 good [2] 31/15 38/25 got [4] 5/7 21/18 40/9 42/6 gotten [1] 42/7 Government [15] 1/5 1/15 4/10 4/12 20/8 20/12 20/16 21/1 27/17 34/18 35/8 35/10 36/5 37/16 37/19 Government's [2] 3/18 36/23 Grand [1] 15/2 ground [1] 41/15 grounds [1] 8/19 group [1] 22/11 guideline [1] 43/5 guidelines [1] 40/18 guilty [1] 6/17 gun [15] 8/14 8/14 8/16 9/21 10/2 24/15 24/24 27/20 30/5 30/7 30/9 33/5 33/5 33/7 37/20</p>	<p>I</p> <p>I -- I [1] 20/17 I'll [9] 7/25 30/1 31/20 32/11 36/1 38/19 39/3 42/3 43/3 I'm [22] 5/21 7/18 18/5 19/13 19/23 20/5 20/7 22/10 22/25 24/3 25/16 27/4 29/17 31/2 34/11 36/21 37/9 37/12 38/3 40/20 43/17 44/22 I've [12] 4/9 5/7 6/11 19/24 38/1 38/4 39/9 39/13 41/21 42/19 43/3 45/2 ice [2] 16/6 16/13 idea [3] 13/17 15/9 38/25 identification [1] 24/5 identified [1] 12/1 identify [3] 23/18 23/23 23/25 if -- there [1] 33/6 illegal [1] 44/13 immediately [3] 9/16 44/8 44/23</p>	<p>J</p> <p>JEFF [5] 3/4 4/14 9/2 11/10 11/15 JESUS [1] 1/9 Jimenez [4] 22/3 22/15 23/9 23/12 JOANA [1] 1/7 JOHN [1] 1/12 jointly [2] 8/8 32/10 JOSE [7] 1/7 1/9 1/11 4/4 5/2 39/3 39/6 JOSH [1] 1/15 Joshua [1] 20/18 JR [1] 1/8 JUDGE [1] 1/12 judgment [2] 21/24 43/21 Judicial [1] 46/6 JULIAN [6] 1/7 1/11 4/4 5/2 39/4 39/6 June [2] 22/25 33/16 June 23rd [2] 22/25 33/16</p>
<p>H</p> <p>had [33] 13/20 14/2 14/12 14/15 14/21 15/1 15/6 16/3 16/4 16/8 17/9 19/1 19/1 20/2 20/9 24/15 24/17 24/20 29/4 30/23 30/24 33/11 33/24 34/3 35/14 35/16 35/16 35/17 36/11 37/14 38/15 40/21 42/8 hadn't [1] 34/11 hand [2] 4/23 9/18 handgun [4] 18/9 27/2 29/17 29/20 has [17] 20/12 27/17 29/22 30/23 33/13 34/18 34/19 35/8 35/9 36/4 36/5 36/6</p>		

<p>J</p> <p>just [19] 15/15 15/16 16/14 16/15 16/17 18/15 21/9 21/17 25/12 28/24 30/8 30/25 31/3 31/7 31/20 37/1 37/3 42/4 42/15</p> <p>JUSTICE [1] 1/15</p>	<p>3/19 4/4 5/2 6/14 39/1 39/4 41/23 45/1 loss [1] 8/22</p> <p>M</p> <p>made [8] 7/7 16/5 20/9 27/7 33/3 33/8 34/17 34/19</p> <p>Mail [2] 2/16 46/19</p> <p>majority [1] 14/24</p> <p>make [12] 17/11 30/12 30/16 33/23 34/3 34/16 36/15 37/17 39/20 39/21 41/24 41/25</p> <p>man [1] 40/13</p> <p>mandatory [1] 39/19</p> <p>manner [1] 6/23</p> <p>Mansfield [1] 1/23</p> <p>manufacture [8] 12/5 12/7 12/17 15/16 15/19 16/10 20/21 34/8</p> <p>manufactured [1] 12/8</p> <p>manufacturing [1] 16/23</p> <p>many [2] 5/17 17/4</p> <p>MARK [6] 1/18 1/19 1/22 1/22 4/5 4/6</p> <p>marsh[al] [1] 8/5</p> <p>MARTHA [1] 1/7</p> <p>matter [1] 46/4</p> <p>may [10] 5/6 6/15 6/16 8/25 17/5 17/17 26/6 28/15 31/18 36/2</p> <p>May 4 [2] 5/6 6/16</p> <p>McBRYDE [1] 1/12</p> <p>me [28] 4/3 4/7 5/6 6/9 6/16 9/4 9/16 9/23 10/15 11/2 13/12 16/12 16/22 19/10 19/12 19/14 20/11 20/23 25/5 31/4 33/25 38/8 38/12 38/22 40/21 40/21 42/5 42/11</p> <p>mean [6] 15/23 16/17 28/15 34/25 41/5 41/19</p> <p>mean. [1] 41/6</p> <p>mean. They [1] 41/6</p> <p>means [1] 45/5</p> <p>mechanical [2] 2/18 28/5</p> <p>meeting [1] 10/14</p> <p>memory [1] 10/7</p> <p>mention [1] 39/25</p> <p>mentioned [2] 26/16 44/11</p> <p>merit [1] 7/10</p> <p>met [2] 4/9 10/11</p> <p>methamphetamine [15] 12/6 15/17 15/20 18/14 18/16 18/25 20/22 21/5 21/18 25/12 25/14 25/21 26/17 28/11 34/9</p> <p>Mexico [9] 13/19 14/2 21/6 22/1 22/6 41/2 41/5 41/11 41/16</p> <p>might [3] 15/10 25/24 42/25</p> <p>million [1] 39/18</p> <p>Milton [1] 2/9</p> <p>mind [1] 30/9</p> <p>minute [4] 8/4 31/7 32/14 45/19</p> <p>misspoke [1] 32/14</p> <p>mitigation [1] 41/25</p> <p>modified [2] 39/9 39/12</p> <p>month [1] 16/3</p> <p>months [3] 39/16 43/6 43/17</p> <p>more [5] 16/20 23/6 23/8 25/10 42/2</p> <p>most [1] 17/4</p> <p>mother [2] 40/6 42/16</p> <p>mother-in-law [1] 40/6</p> <p>motion [3] 3/18 39/23 40/1</p> <p>move [1] 28/24</p> <p>MR [17] 1/15 1/18 1/22 2/1 2/4 2/8 3/3 3/4 3/5 3/5 3/6 3/6 3/8 3/10 3/15 11/13 32/15</p> <p>Mr. [97]</p> <p>Mr. -- let [1] 38/8</p>	<p>Mr. -- let's [1] 32/13</p> <p>Mr. -- what [1] 4/25</p> <p>Mr. Brantley [4] 11/5 20/19 35/3 36/10</p> <p>Mr. Burgess [7] 4/10 27/15 33/20 33/20 34/6 34/11 35/2</p> <p>Mr. Danielson [1] 8/23</p> <p>Mr. De [6] 17/15 17/20 30/14 31/19 32/15 33/8</p> <p>Mr. Durden [6] 9/24 10/20 26/10 28/24 29/5 38/10</p> <p>Mr. Durden -- before [1] 9/23</p> <p>Mr. Gomez [13] 14/18 14/19 14/21 16/7 17/3 17/6 17/23 21/8 25/12 25/13 25/19 26/2 30/11</p> <p>Mr. Gomez' [1] 22/4</p> <p>Mr. Horta [9] 24/15 24/17 24/20 24/23 25/1 25/6 25/10 25/24 27/12</p> <p>Mr. Jimenez [3] 22/15 23/9 23/12</p> <p>Mr. Mark [1] 4/5</p> <p>Mr. Nunez [12] 25/13 25/20 26/4 26/17 27/7 27/22 27/25 28/9 28/13 28/18 29/14 29/19</p> <p>Mr. Nunez's [1] 27/17</p> <p>MR. O'SHEA [2] 24/13 38/8</p> <p>Mr. Orozco [10] 14/17 14/19 14/22 14/25 15/3 15/10 21/8 22/4 25/12 26/2</p> <p>Mr. Orozco-Lopez [2] 41/23 45/1</p> <p>Mr. Perez [15] 4/7 4/16 6/22 19/5 21/11 22/24 31/18 32/14 32/16 34/14 36/14 36/25 37/4 39/4 45/15</p> <p>MS [2] 2/12 38/24</p> <p>Ms. [12] 4/19 5/18 8/17 13/19 13/22 13/23 13/24 14/13 14/17 14/22 15/3 30/6</p> <p>Ms. Gonzalez [2] 4/19 5/18</p> <p>Ms. Rosales [9] 8/17 13/22 13/23 13/24 14/13 14/17 14/22 15/3 30/6</p> <p>Ms. Rosales' [1] 13/19</p> <p>much [4] 16/4 21/10 41/3 41/5</p> <p>my [48]</p> <p>myself [2] 6/16 36/10</p>
<p>K</p> <p>keep [1] 34/24</p> <p>key [4] 14/22 17/9 17/11 27/22</p> <p>kill [1] 41/6</p> <p>kilos [1] 21/17</p> <p>kind [10] 18/8 28/5 34/16 34/19 40/12 40/15 41/1 41/1 41/8 41/14</p> <p>knew [8] 16/7 17/23 20/3 23/16 24/23 25/1 33/2 33/4</p> <p>know [16] 4/9 6/9 9/16 14/11 15/25 17/14 19/10 19/22 19/24 21/22 22/17 33/5 40/5 40/22 42/9 42/13</p> <p>knowing [3] 23/11 23/13 23/15</p> <p>knowledge [14] 10/20 13/15 27/13 27/24 29/25 30/22 30/24 31/25 32/10 35/14 35/16 35/22 37/14 37/20</p> <p>L</p> <p>la [14] 2/4 2/5 3/5 3/8 17/15 17/20 22/7 22/8 22/12 22/19 30/14 31/19 32/15 33/8</p> <p>lack [1] 31/1</p> <p>lack -- we're [1] 31/1</p> <p>language [4] 7/1 7/4 25/10 27/13</p> <p>large [6] 12/6 25/13 25/14 25/20 25/21 26/17</p> <p>last [1] 38/19</p> <p>law [8] 1/19 1/22 2/1 2/5 2/8 14/23 40/6 40/7</p> <p>laws [2] 42/10 42/14</p> <p>lawyers [1] 38/8</p> <p>lay [1] 16/19</p> <p>learn [1] 25/7</p> <p>least [5] 15/14 20/1 35/15 41/10 44/20</p> <p>left [2] 14/2 14/12</p> <p>legitimate [1] 37/11</p> <p>length [1] 10/11</p> <p>lengthy [1] 42/23</p> <p>less [1] 29/22</p> <p>let [18] 4/3 4/7 6/9 7/25 9/4 9/16 9/23 10/15 13/12 16/18 19/12 19/23 20/5 25/5 33/25 38/8 38/12 38/22</p> <p>let's [20] 5/7 6/15 8/23 9/9 17/15 19/4 24/9 26/4 27/6 27/6 28/21 28/23 28/24 30/7 30/9 30/11 31/7 32/13 34/24 35/1</p> <p>level [4] 8/16 34/20 35/9 39/14</p> <p>level -- to [1] 34/20</p> <p>lies [1] 33/16</p> <p>life [2] 41/1 41/11</p> <p>like [9] 7/24 10/2 30/16 38/23 39/20 40/25 41/6 41/17 41/24</p> <p>limit [1] 10/25</p> <p>liquid [2] 12/9 16/17</p> <p>live [1] 40/23</p> <p>lived [6] 15/3 25/13 25/17 25/19 26/17 28/9</p> <p>local [1] 44/14</p> <p>located [4] 12/1 13/2 25/22 32/9</p> <p>location [2] 12/3 12/3</p> <p>long [5] 12/11 12/12 16/1 29/11 41/12</p> <p>long-term [1] 12/11</p> <p>look [3] 19/13 30/18 41/3</p> <p>looking [1] 20/7</p> <p>LOPEZ [13] 1/7 1/11 1/19 3/13 3/16</p>	<p>may [10] 5/6 6/15 6/16 8/25 17/5 17/17 26/6 28/15 31/18 36/2</p> <p>May 4 [2] 5/6 6/16</p> <p>McBRYDE [1] 1/12</p> <p>me [28] 4/3 4/7 5/6 6/9 6/16 9/4 9/16 9/23 10/15 11/2 13/12 16/12 16/22 19/10 19/12 19/14 20/11 20/23 25/5 31/4 33/25 38/8 38/12 38/22 40/21 40/21 42/5 42/11</p> <p>mean [6] 15/23 16/17 28/15 34/25 41/5 41/19</p> <p>mean. [1] 41/6</p> <p>mean. They [1] 41/6</p> <p>means [1] 45/5</p> <p>mechanical [2] 2/18 28/5</p> <p>meeting [1] 10/14</p> <p>memory [1] 10/7</p> <p>mention [1] 39/25</p> <p>mentioned [2] 26/16 44/11</p> <p>merit [1] 7/10</p> <p>met [2] 4/9 10/11</p> <p>methamphetamine [15] 12/6 15/17 15/20 18/14 18/16 18/25 20/22 21/5 21/18 25/12 25/14 25/21 26/17 28/11 34/9</p> <p>Mexico [9] 13/19 14/2 21/6 22/1 22/6 41/2 41/5 41/11 41/16</p> <p>might [3] 15/10 25/24 42/25</p> <p>million [1] 39/18</p> <p>Milton [1] 2/9</p> <p>mind [1] 30/9</p> <p>minute [4] 8/4 31/7 32/14 45/19</p> <p>misspoke [1] 32/14</p> <p>mitigation [1] 41/25</p> <p>modified [2] 39/9 39/12</p> <p>month [1] 16/3</p> <p>months [3] 39/16 43/6 43/17</p> <p>more [5] 16/20 23/6 23/8 25/10 42/2</p> <p>most [1] 17/4</p> <p>mother [2] 40/6 42/16</p> <p>mother-in-law [1] 40/6</p> <p>motion [3] 3/18 39/23 40/1</p> <p>move [1] 28/24</p> <p>MR [17] 1/15 1/18 1/22 2/1 2/4 2/8 3/3 3/4 3/5 3/5 3/6 3/6 3/8 3/10 3/15 11/13 32/15</p> <p>Mr. [97]</p> <p>Mr. -- let [1] 38/8</p>	<p>N</p> <p>name [5] 4/7 4/25 11/14 33/7 36/4</p> <p>name. [1] 33/5</p> <p>name. I [1] 33/5</p> <p>named [1] 22/3</p> <p>Nationality [1] 44/4</p> <p>nature [1] 42/24</p> <p>necessarily [1] 37/25</p> <p>necessary [1] 7/23</p> <p>need [4] 4/17 5/17 8/1 38/5</p> <p>nefarious [1] 40/15</p> <p>never [2] 25/9 42/8</p> <p>next [2] 19/4 32/13</p> <p>nightstand [5] 13/1 26/25 27/1 28/4 29/10</p> <p>no [37] 1/4 4/21 12/12 13/9 15/1 17/24 21/20 22/10 23/6 23/16 24/7 24/16 24/19 24/22 24/25 25/3 26/20 26/21 27/3 27/12 27/18 28/2 29/7 29/12 29/15 30/5 33/2 33/3 33/4 33/6 36/12 38/9 38/11 39/5 41/7 41/22 46/11</p> <p>normally [1] 5/3</p> <p>North [2] 2/2 11/18</p> <p>NORTHERN [3] 1/2 1/16 46/12</p> <p>not [56]</p> <p>note [2] 3/19 32/23</p> <p>noted [1] 36/6</p> <p>notice [1] 45/7</p> <p>now [26] 4/3 4/16 8/15 9/14 16/22 19/11 23/15 26/16 26/22 27/7 27/10 27/15 27/22 28/3 28/15 29/16 30/9 33/9 34/1</p>

<p>N Case 4:19-cr-00059-A Document 156 Filed 10/13/19 Page 52 of 55 PageID 583 now... [7] 37/6 37/21 39/3 40/9 40/17 40/18 44/7 number [3] 19/16 19/18 31/24 NUNEZ [19] 1/8 2/1 3/12 25/13 25/20 26/4 26/12 26/17 27/7 27/22 27/25 28/9 28/13 28/18 29/14 29/19 37/7 37/18 38/4 Nunez's [1] 27/17</p>	<p>outlines [1] 45/10 outside [1] 44/6 over [9] 24/15 24/18 24/21 26/1 28/12 29/20 32/9 34/24 35/14 override [3] 32/11 35/6 36/1 own [2] 15/1 41/15 owned [1] 13/7 ownership [4] 24/15 24/18 24/21 29/20</p>	<p>preponderance [1] 32/5 prescribed [1] 46/6 presence [2] 34/7 37/14 present [5] 11/19 12/14 26/12 26/22 28/3 presentation [1] 41/24 presented [1] 31/2 presentence [4] 6/23 39/6 39/8 39/11 pressure [1] 40/13 presumably [1] 35/24 pretty [3] 15/11 16/4 28/22 previously [1] 44/11 primarily [2] 7/14 23/4 prior [1] 27/15 prison [3] 41/12 43/7 43/19 Prisons [2] 43/16 44/1 probably [4] 20/1 23/22 26/2 38/25 probation [12] 7/8 9/25 10/4 10/10 10/13 10/22 11/2 37/10 37/11 37/22 44/17 44/21 problem [3] 5/15 6/9 9/15 problems [2] 5/8 5/9 procedures [1] 44/3 proceed [2] 8/25 31/18 PROCEEDING [1] 3/2 proceedings [10] 2/18 8/7 8/8 9/13 10/17 31/9 31/14 39/1 45/23 46/4 process [2] 12/11 16/23 produced [1] 2/19 proposed [1] 41/4 protection [1] 43/13 provide [2] 21/9 35/10 provided [4] 33/11 33/12 35/9 44/3 providing [1] 34/10 proximity [1] 35/23 PSR [4] 3/3 7/16 19/21 19/21 public [1] 43/14 punishment [1] 43/13 pure [1] 16/17 purpose [3] 4/20 12/17 16/2 purposes [4] 16/2 35/25 35/25 37/16 pursuant [1] 43/23 pursue [1] 7/11 put [2] 16/15 38/19 putting [1] 9/7</p>
<p>O O'SHEA [5] 2/8 2/8 3/6 24/13 38/8 object [1] 20/7 objected [2] 7/20 20/8 objecting [1] 36/21 objection [10] 7/13 7/13 8/16 19/17 19/19 19/20 32/11 32/23 35/7 36/1 objections [10] 3/3 7/6 7/8 7/11 19/10 19/12 19/13 19/18 38/4 39/5 objectives [1] 43/13 obligations [1] 45/10 occupant [1] 27/25 October [1] 46/8 off [2] 41/10 41/20 offense [4] 6/17 20/24 35/5 39/14 offer [3] 13/10 30/12 41/21 office [4] 1/19 1/22 2/8 44/24 officer [17] 4/15 7/8 9/2 9/25 10/4 10/10 10/13 10/22 11/2 11/17 11/18 17/21 26/11 37/10 37/11 44/17 44/21 official [2] 44/2 46/12 often [1] 25/24 Oh [3] 10/6 14/8 38/16 okay [78] Okay. [2] 28/11 28/15 Okay. But [1] 28/11 Okay. Now [1] 28/15 old [4] 40/4 40/20 40/22 42/12 omissions [1] 33/16 once [4] 16/16 16/17 43/24 45/12 one [19] 6/18 7/14 14/21 14/23 16/7 16/8 17/3 17/4 18/20 18/22 21/22 31/5 31/13 31/24 33/2 38/22 38/22 43/24 44/19 one-count [1] 6/18 ones [1] 22/11 only [12] 3/13 7/20 8/14 15/24 18/22 26/1 26/12 27/19 29/3 30/15 37/22 39/2 opportunity [4] 40/23 41/2 41/3 41/10 order [1] 7/9 ordered [1] 44/5 ordering [3] 43/15 43/18 44/22 ordinarily [1] 6/13 organization [1] 22/9 OROZCO [26] 1/7 1/11 1/19 3/13 3/16 3/19 4/4 5/2 5/4 6/14 14/17 14/19 14/22 14/25 15/3 15/10 21/8 22/4 25/12 26/2 26/14 39/1 39/4 39/7 41/23 45/1 OROZCO-LOPEZ [11] 1/7 1/11 1/19 3/13 3/16 3/19 4/4 5/2 6/14 39/1 39/4 Orozco-Perez [1] 39/7 other [19] 7/4 8/6 8/7 10/7 16/9 17/12 18/17 18/20 18/20 19/8 19/9 19/14 21/20 21/23 23/2 28/12 33/7 37/16 38/17 others [4] 32/11 42/13 42/13 43/1 others -- still [1] 42/13 our [7] 7/12 21/4 23/5 31/21 32/23 36/9 39/23 out [16] 5/18 16/19 16/19 17/7 18/14 18/24 24/6 31/8 36/13 40/11 40/20 40/21 41/14 42/12 43/7 43/19</p>	<p>P PAGE [1] 3/2 parental [1] 40/13 part [4] 11/25 30/19 40/4 40/5 participated [2] 16/22 17/5 particular [2] 19/1 19/2 parties [1] 42/24 pass [1] 30/1 past [1] 33/16 Pattern [2] 30/18 30/20 Paul [1] 1/19 pauperis [1] 45/5 Pause [4] 9/13 10/17 31/9 31/14 pay [1] 44/22 payable [1] 44/23 payment [1] 43/8 people [4] 35/25 41/5 41/6 42/6 per [1] 28/15 percent [1] 22/10 PEREZ [25] 1/18 1/19 3/3 3/5 3/10 3/15 4/5 4/6 4/7 4/16 6/22 19/5 21/11 22/24 31/18 32/14 32/15 32/16 34/14 36/14 36/25 37/4 39/4 39/7 45/15 perfectly [1] 37/10 perhaps [2] 32/10 37/13 periodic [1] 44/20 person [3] 22/1 32/24 32/25 personally [1] 13/7 persons [1] 42/6 pertinent [1] 11/6 phone [1] 23/17 pick [1] 21/22 picked [2] 21/17 21/20 picking [1] 21/19 place [1] 15/19 plain [2] 27/2 27/5 Plano [1] 2/6 play [1] 27/6 plea [1] 6/21 pleaded [1] 6/17 please [2] 11/14 26/6 pleases [1] 30/16 plus [3] 35/12 43/7 43/23 point [5] 5/25 16/8 23/23 34/25 36/15 pointed [1] 24/6 pointing [1] 21/19 police [1] 11/18 portion [1] 44/9 position [11] 6/5 9/24 10/23 11/1 11/3 20/8 22/8 31/21 36/5 36/11 36/24 possess [3] 6/18 33/1 44/13 possessed [2] 10/21 13/7 possesses [1] 32/24 possession [12] 8/20 20/2 27/20 30/17 30/19 30/21 31/21 31/22 32/7 32/7 32/21 35/17 possession. [1] 32/22 possession. In [1] 32/22 pot [1] 16/14 pour [2] 16/18 16/19 powder [4] 12/9 16/6 16/12 16/15 Prairie [1] 15/2 preacher [1] 40/7 premises [1] 24/18</p>	<p>Q qualify [3] 36/7 36/22 45/5 quantities [1] 12/6 quantity [1] 25/14 question [11] 13/12 18/5 20/6 20/18 23/20 26/22 28/20 29/1 36/18 37/7 40/17 questioned [1] 10/23 questions [13] 11/5 17/16 19/5 19/9 21/12 23/4 24/7 24/10 26/4 30/4 34/12 35/3 36/16 quite [3] 15/12 23/7 28/19</p> <p>R RAFAEL [1] 2/4 raise [2] 4/22 9/18 range [4] 39/16 39/17 39/17 43/5 rather [1] 41/11 read [2] 6/25 10/19 ready [3] 14/15 20/3 35/16 real [2] 12/12 40/5 really [7] 17/4 18/19 20/7 23/17 33/2 41/7 42/8 reasonable [5] 11/3 35/12 40/18 41/10 43/12 reasonably [3] 29/1 32/8 35/19 reasons [1] 35/8</p>

<p>R</p> <p>recalculating [1] 38/13</p> <p>recalculation [1] 38/5</p> <p>recall [4] 7/7 18/20 28/10 28/15</p> <p>receive [2] 6/22 37/23</p> <p>receive -- not [1] 37/23</p> <p>receiving [1] 35/7</p> <p>recess [2] 45/19 45/22</p> <p>recollection [1] 18/21</p> <p>recommendation [1] 37/22</p> <p>recommended [1] 10/4</p> <p>record [2] 19/25 46/3</p> <p>reduced [1] 42/11</p> <p>reduction [1] 8/18</p> <p>reference [1] 45/10</p> <p>referred [1] 36/16</p> <p>referring [2] 19/17 29/17</p> <p>refrain [1] 44/18</p> <p>refreshing [1] 10/6</p> <p>refusal [1] 10/1</p> <p>regarding [10] 7/13 7/15 19/9 19/20 32/20 33/9 35/4 35/5 39/23 40/3</p> <p>regularly [1] 12/14</p> <p>related [2] 9/22 37/3</p> <p>relative [1] 8/13</p> <p>release [9] 39/17 43/6 43/18 43/20 43/24 44/5 44/8 44/10 44/20</p> <p>relying [1] 34/11</p> <p>remain [1] 44/5</p> <p>remanded [1] 45/17</p> <p>remember [2] 10/6 23/11</p> <p>repeating [1] 6/15</p> <p>report [5] 6/23 10/12 39/6 39/8 39/12</p> <p>reported [1] 2/18</p> <p>REPORTER [2] 2/14 46/12</p> <p>Reporter's [2] 3/21 46/1</p> <p>represent [1] 20/20</p> <p>represented [1] 4/5</p> <p>request [1] 45/8</p> <p>residence [7] 11/25 12/15 12/21 13/19 15/1 15/19 15/22</p> <p>resides [1] 21/5</p> <p>resolve [1] 34/5</p> <p>respect [1] 34/22</p> <p>responded [1] 7/9</p> <p>response [1] 7/7</p> <p>responsibility [5] 9/22 9/25 10/5 10/24 40/12</p> <p>responsible [3] 11/22 21/16 21/18</p> <p>result [3] 10/18 18/18 37/21</p> <p>resulting [1] 6/21</p> <p>resume [2] 10/8 45/20</p> <p>return [1] 45/13</p> <p>review [1] 45/12</p> <p>Richland [2] 2/2 11/18</p> <p>right [14] 4/22 9/18 23/11 29/9 30/9 33/14 37/5 37/21 38/16 41/24 42/8 45/1 45/4 45/6</p> <p>rights [1] 45/10</p> <p>rise [1] 45/21</p> <p>RMR [3] 2/14 46/2 46/11</p> <p>role [6] 14/6 15/24 20/22 20/25 25/7 35/4</p> <p>Room [2] 2/14 46/16</p> <p>ROSALES [12] 1/7 1/22 8/17 13/22 13/23 13/24 14/13 14/17 14/22 15/3 30/6 38/24</p> <p>Rosales' [1] 13/19</p> <p>Rufe [1] 2/2</p> <p>ruling [6] 3/8 3/10 3/12 3/18 36/21 36/22</p> <p>ruling -- I'm [1] 36/21</p> <p>running [1] 41/15</p>	<p>S</p> <p>SAENZ [4] 2/14 46/2 46/10 46/11</p> <p>safety [14] 7/14 7/19 8/18 20/12 27/18 30/13 32/25 34/21 35/7 36/6 36/8 36/23 37/15 37/23</p> <p>said [10] 13/23 27/14 32/1 33/10 33/22 33/23 37/1 38/1 42/21 43/3</p> <p>sale [3] 18/25 20/21 34/8</p> <p>SALVADOR [1] 1/8</p> <p>same [6] 4/3 6/1 6/8 13/4 26/11 34/24</p> <p>satisfied [1] 45/12</p> <p>say [15] 12/7 15/14 15/15 16/21 17/4 26/11 27/1 29/16 32/16 33/25 34/2 34/4 34/24 38/7 39/23</p> <p>saying [6] 8/17 8/18 14/11 21/20 23/15 30/25</p> <p>scale [4] 13/4 18/15 18/17 19/1</p> <p>scales [21] 18/4 18/7 18/12 18/13 18/20 24/21 25/2 28/3 28/4 28/5 28/5 28/7 28/8 28/17 28/22 28/25 29/4 29/17 35/20 35/23 35/24</p> <p>se [1] 28/15</p> <p>search [2] 12/20 18/18</p> <p>searched [1] 33/6</p> <p>seated [5] 8/5 8/6 8/23 9/20 37/4</p> <p>second [6] 7/13 10/14 10/19 19/19 19/20 43/1</p> <p>Section [2] 43/11 43/23</p> <p>see [13] 5/7 6/4 6/15 10/15 17/15 19/4 19/12 20/7 23/23 24/9 26/4 32/13 42/16</p> <p>seek [1] 23/22</p> <p>seeking [1] 23/25</p> <p>seems [1] 11/1</p> <p>seen [2] 7/7 11/20</p> <p>selling [1] 25/12</p> <p>sense [3] 15/9 20/2 25/23</p> <p>sentence [9] 3/17 42/11 43/5 43/9 43/9 43/12 43/22 43/25 45/2</p> <p>sentence -- such [1] 43/9</p> <p>sentenced [1] 42/21</p> <p>sentences [4] 42/22 42/23 42/23 42/25</p> <p>sentencing [7] 1/11 3/15 6/20 33/18 42/2 42/19 43/3</p> <p>sentencings [1] 45/20</p> <p>separately [1] 5/22</p> <p>serve [2] 43/17 43/18</p> <p>set [5] 29/3 39/8 42/12 42/13 43/21</p> <p>shall [8] 32/17 43/25 44/5 44/13 44/14 44/16 44/18 44/19</p> <p>should [8] 8/18 10/1 30/13 34/17 42/1 42/7 43/11 44/8</p> <p>show [1] 30/23</p> <p>sic [4] 22/17 24/2 31/18 39/7</p> <p>sign [1] 45/13</p> <p>Signed [1] 46/8</p> <p>simply [3] 5/12 10/22 15/16</p> <p>since [2] 11/1 36/4</p> <p>sir [30] 5/5 6/3 11/24 12/12 13/15 14/5 14/5 15/1 15/5 15/8 15/24 16/11 16/25 19/3 22/10 22/21 23/14 23/24 24/16 24/19 24/22 24/25 25/3 26/15 27/3 27/9 27/12 28/2 29/12 29/15</p> <p>sister [1] 40/7</p> <p>sister-in-law [1] 40/7</p> <p>sit [1] 18/5</p> <p>skill [1] 41/14</p> <p>small [3] 18/15 18/15 18/25</p> <p>Snow [1] 2/2</p> <p>so [31] 6/4 8/4 8/22 9/16 10/25 11/4 14/23 15/18 16/4 16/5 18/15 18/19 18/21 18/23 18/24 21/21 32/11 36/1 37/21 38/3 38/5 40/15 41/7 41/14 41/17</p>	<p>42/11 42/12 42/13 42/20 43/3 43/15 45/11 some [13] 5/8 5/9 7/6 16/8 19/8 22/5 23/23 33/11 37/16 38/5 38/13 41/14 41/20</p> <p>somebody [1] 25/11</p> <p>someplace [1] 15/4</p> <p>something [13] 6/1 10/2 16/20 17/1 21/13 23/22 25/18 28/24 29/2 34/2 34/4 34/6 41/16</p> <p>sorry [5] 22/25 24/3 25/16 27/4 31/4</p> <p>sorts [1] 36/20</p> <p>source [2] 21/5 36/19</p> <p>speak [6] 9/5 9/8 16/5 20/18 23/7 27/12</p> <p>speaking [2] 23/16 29/23</p> <p>special [3] 39/18 43/8 44/22</p> <p>specific [2] 17/22 17/25</p> <p>specifically [3] 21/13 25/5 45/8</p> <p>spoke [5] 21/8 23/24 25/9 27/15 33/19</p> <p>St [2] 1/19 1/19</p> <p>stand [3] 5/13 5/22 40/7</p> <p>standard [2] 43/21 44/10</p> <p>start [2] 41/13 43/19</p> <p>state [3] 11/14 36/23 44/14</p> <p>statement [8] 27/7 27/11 30/12 30/15 33/3 37/16 39/20 41/24</p> <p>statements [6] 3/15 14/10 15/12 16/25 27/17 34/13</p> <p>STATES [12] 1/1 1/4 1/12 1/15 43/11 43/23 44/6 44/9 44/24 44/24 45/3 46/7</p> <p>stay [1] 30/8</p> <p>stayed [1] 15/25</p> <p>staying [1] 14/25</p> <p>stenography [1] 2/18</p> <p>step [4] 8/4 38/14 38/20 38/21</p> <p>still [3] 7/11 38/15 42/13</p> <p>stop [1] 31/7</p> <p>store [2] 15/16 15/19</p> <p>Strada [1] 1/23</p> <p>Street [4] 1/16 2/5 2/14 46/16</p> <p>subject [9] 11/5 21/3 21/9 22/3 30/13 34/24 41/21 41/25 42/2</p> <p>subjects [1] 8/22</p> <p>submit [1] 44/19</p> <p>substance [2] 6/19 44/19</p> <p>substances [1] 44/13</p> <p>such [2] 37/13 43/9</p> <p>sufficient [1] 37/14</p> <p>suggested [1] 9/25</p> <p>suggestion [1] 41/9</p> <p>Suite [5] 1/16 1/19 1/23 2/2 2/9</p> <p>supervised [7] 39/16 43/6 43/18 43/20 43/24 44/4 44/10</p> <p>supplemented [2] 39/9 39/12</p> <p>supply [2] 21/5 36/19</p> <p>supplying [1] 22/2</p> <p>supposed [3] 22/4 22/7 42/14</p> <p>sure [4] 7/18 9/4 9/10 9/23</p> <p>surname [3] 5/4 6/12 6/12</p> <p>surrendered [1] 44/1</p> <p>sustaining [1] 38/3</p> <p>sworn [6] 4/20 4/23 4/24 9/18 9/19 11/11</p> <p>T</p> <p>take [8] 5/21 19/22 40/3 40/25 41/9 41/17 42/1 45/19</p> <p>taken [1] 31/23</p> <p>takes [1] 40/12</p> <p>taking [4] 10/5 12/9 16/14 20/8</p> <p>talked [3] 28/25 33/19 34/6</p> <p>talking [2] 19/13 23/6</p> <p>task [3] 4/14 9/2 11/17</p> <p>technical [1] 5/9</p>
---	--	--

<p>T Case 4:10-cr-00050-A Document 156 Filed 10/13/10 Page 54 of 55 PageID 585 Telephone [8] 1/17 1/20 1/24 2/3 2/6 2/10 2/15 46/18 tell [5] 16/12 20/23 22/14 28/16 40/15 telling [1] 21/21 tells [1] 33/17 tense [1] 42/2 tentative [1] 7/9 term [5] 12/11 43/6 43/17 43/18 44/9 test [1] 44/19 testified [4] 11/11 34/11 35/3 36/12 testify [1] 28/17 testimony [7] 3/4 8/13 11/4 29/3 33/2 34/15 34/16 tests [1] 44/21 TEXAS [13] 1/2 1/5 1/16 1/17 1/20 1/23 2/2 2/6 2/9 2/15 46/11 46/12 46/16 than [4] 10/7 18/20 29/23 41/11 Thank [15] 5/16 6/10 8/2 11/7 11/9 18/6 24/7 26/3 29/19 30/1 37/2 38/2 39/22 42/17 42/18 that [222] that's [19] 5/15 7/24 10/25 13/10 18/3 18/21 20/6 23/22 25/4 29/3 31/2 32/2 32/3 32/3 32/22 34/2 38/16 42/10 44/23 the -- as [1] 10/19 the -- converted [1] 16/6 the -- I [1] 19/16 the -- is [1] 25/24 the -- my [1] 33/10 the -- the [2] 28/3 28/11 the -- you [1] 18/4 their [15] 8/12 9/7 15/1 15/11 15/24 16/24 21/12 22/15 23/6 33/21 35/23 37/8 37/8 37/13 42/20 them [14] 6/6 14/21 15/6 17/1 21/11 21/13 21/19 21/22 21/24 22/16 22/17 23/21 37/9 37/12 then [13] 5/25 10/10 11/4 16/16 16/17 16/19 21/15 22/15 24/1 27/1 33/13 35/2 40/2 there [42] 5/9 5/19 7/6 7/13 8/18 10/12 13/2 14/10 15/12 15/25 18/17 20/4 21/3 21/15 24/4 26/1 26/13 26/17 26/20 26/20 27/19 28/8 28/10 28/11 28/12 28/17 29/14 30/19 30/23 31/1 31/22 32/21 33/4 33/6 33/11 35/12 35/20 36/13 38/7 38/13 39/5 41/3 there's [5] 9/15 24/1 33/3 41/7 41/7 thereafter [1] 44/21 therefore [1] 10/23 these [6] 11/20 12/14 15/23 16/1 41/5 42/22 they [54] thing [3] 23/8 26/11 42/8 things [3] 36/20 39/24 41/25 think [28] 7/16 9/21 9/25 10/18 10/25 19/6 19/16 19/23 19/24 20/3 20/11 28/20 32/14 32/21 32/23 36/13 36/14 36/21 36/22 36/25 37/7 37/10 37/25 40/10 41/13 41/13 42/1 42/23 this [31] 4/3 4/20 5/9 5/10 6/18 8/10 8/11 8/13 11/6 11/22 17/16 19/5 21/5 21/8 22/11 23/7 24/10 26/5 29/23 33/20 34/6 34/12 36/6 36/17 39/22 40/6 40/9 42/3 42/10 42/14 46/8 those [14] 6/25 7/3 7/11 8/22 16/2 18/13 19/10 29/11 29/13 35/21 35/25 36/20 38/5 46/6 though [2] 36/9 37/10 thought [3] 10/22 33/23 43/1 thoughts [1] 42/22</p>	<p>three [4] 5/19 6/1 9/5 9/14 through [3] 22/17 37/1 44/24 time [13] 6/2 6/8 8/10 8/14 11/6 14/24 16/4 27/7 40/14 41/4 41/10 41/18 42/3 timely [1] 6/23 times [1] 17/4 to -- we'll [1] 8/1 today [4] 6/20 11/19 27/16 36/12 TODD [1] 2/1 together [2] 14/24 15/4 told [1] 28/24 tomorrow [1] 41/7 too [1] 42/12 took [2] 10/9 11/2 tools [1] 28/12 total [2] 5/19 39/14 trade [2] 28/12 41/14 trafficking [3] 13/3 14/4 14/7 transcript [4] 1/11 2/18 46/3 46/5 transferring [1] 12/10 tried [1] 23/21 TRINIDAD [1] 1/8 true [1] 46/3 truth [2] 21/21 33/17 truthful [8] 21/12 21/24 27/14 29/23 33/10 36/12 36/18 36/19 truthfulness [4] 7/21 20/19 27/18 33/9 try [2] 23/18 41/15 trying [2] 23/8 36/15 trying -- was [1] 36/15 two [12] 7/3 8/16 13/12 16/4 23/1 30/20 31/22 34/20 35/7 38/6 44/20 45/11 two-level [1] 8/16 type [1] 42/8</p> <p>U U.S [2] 21/18 25/21 ultimately [1] 33/17 unaware [1] 32/25 uncle [1] 22/4 under [3] 26/2 26/13 43/11 understand [5] 8/14 8/20 9/24 28/19 45/13 understanding [6] 16/24 17/9 20/13 25/9 25/11 27/16 understanding -- I [1] 25/9 understood [1] 37/3 unfortunately [1] 42/6 UNITED [12] 1/1 1/4 1/12 1/15 43/11 43/23 44/6 44/9 44/23 44/24 45/3 46/7 unlawful [1] 44/18 unless [2] 7/23 37/16 untruthful [1] 27/10 untruthfulness [2] 7/15 19/15 up [7] 5/22 18/16 21/17 21/19 21/20 21/22 36/4 upon [4] 10/5 17/21 30/25 44/8 use [7] 5/10 6/13 16/1 18/25 19/1 37/8 44/18 used [7] 12/4 12/5 13/16 15/18 15/21 18/13 35/24 using [2] 16/4 35/25 usually [1] 18/14 utilized [1] 15/16</p> <p>V valve [14] 7/14 7/19 8/19 20/12 27/19 30/14 32/25 34/21 35/7 36/6 36/8 36/23 37/15 37/23 variance [3] 39/23 40/1 41/20 VERSUS [1] 1/6 very [5] 5/24 6/7 23/10 35/15 36/17 view [3] 27/2 27/6 43/9</p>	<p>visiting [1] 14/3 VOLUME [1] 1/1 W want [21] 7/15 11/5 19/10 19/10 19/14 20/6 20/17 29/5 30/4 30/12 30/12 32/16 34/2 34/4 34/23 36/9 36/14 36/23 38/20 45/11 45/13 wanted [8] 17/7 17/8 18/24 19/9 30/4 38/7 39/23 41/20 wants [1] 8/5 was [98] was -- he [1] 33/11 wasn't [2] 8/19 23/19 water [2] 16/14 16/15 way [4] 5/1 16/8 22/5 28/21 we [38] 5/10 5/17 6/11 6/24 7/12 7/15 8/10 8/13 8/21 8/22 9/8 9/9 9/16 9/23 10/15 10/16 10/25 18/20 21/8 21/11 21/12 22/14 23/6 23/24 30/8 31/7 31/13 32/3 32/3 32/21 32/22 33/15 34/15 36/17 38/15 38/16 40/19 41/3 we -- at [1] 8/10 we'll [5] 8/1 10/25 11/4 38/5 45/20 we're [9] 5/8 6/20 8/3 30/25 31/1 31/5 31/15 38/12 45/19 we've [2] 31/1 34/14 weekly [1] 15/14 weigh [2] 18/16 18/24 Weighing [1] 18/14 well [22] 5/12 5/24 6/7 7/25 10/3 15/21 20/15 20/17 22/18 25/23 28/22 32/5 33/22 33/25 34/10 34/12 34/22 34/25 35/1 40/2 42/6 42/19 were [52] were -- the [1] 23/7 were -- you [1] 23/4 were exactly [1] 34/13 what [46] 4/25 6/12 6/12 9/24 10/7 12/17 13/16 14/6 18/8 18/13 19/12 19/24 20/7 21/1 22/8 23/21 24/3 25/7 25/7 25/16 27/14 28/5 33/12 33/13 33/21 33/22 33/23 34/13 35/2 37/1 37/3 37/11 38/1 40/12 40/15 40/17 40/19 40/22 40/25 41/1 41/1 41/13 41/21 42/1 42/21 43/3 what's [1] 32/23 whatever [1] 39/20 when [14] 12/7 17/7 17/7 21/8 22/25 29/14 29/16 36/19 40/9 40/19 41/14 42/21 43/7 43/19 whenever [2] 21/11 23/20 where [11] 6/5 6/11 7/8 8/20 10/15 10/25 12/25 25/13 25/20 28/9 32/9 wherever [1] 8/5 whether [18] 4/9 7/18 10/23 21/16 21/17 22/15 24/14 24/17 24/20 24/23 25/1 27/19 28/16 28/17 30/13 34/5 36/11 36/18 which [7] 19/14 19/17 26/16 30/21 34/5 34/5 35/25 while [3] 8/6 31/7 38/12 who [19] 4/13 8/11 14/15 16/5 16/5 16/7 19/4 21/5 21/15 21/16 21/18 21/21 22/1 22/2 22/4 32/13 32/24 32/25 33/17 whole [3] 16/4 23/11 23/17 Whose [1] 13/21 why [9] 8/4 8/10 8/13 8/22 9/21 30/8 32/22 38/16 42/10 wife [1] 40/6 will [12] 5/17 5/25 6/10 7/12 7/18 8/11 35/2 40/15 43/9 43/20 43/21 45/7 willing [1] 23/18</p>
---	---	---

wish [1] 7/11
wishes [1] 37/17
withdraw [1] 7/12
withdrawal [1] 37/21
withdrew [1] 32/22
within [2] 44/9 44/19
without [2] 5/10 45/5
witness [13] 9/19 17/16 19/5 24/10 26/5
30/2 33/22 33/23 34/10 34/13 36/15
37/1 38/20
witness' [1] 34/14
wondering [1] 40/21
Word [1] 3/22
words [1] 21/23
work [3] 6/4 11/17 31/8
working [2] 41/14 42/5
WORTH [6] 1/3 1/5 1/17 2/15 46/13
46/16
would [41] 4/22 13/3 13/10 15/14 16/15
16/16 16/17 16/19 16/19 21/11 22/16
24/1 24/4 24/4 26/1 26/11 26/12 27/19
30/16 33/20 33/23 34/20 35/10 35/22
37/14 37/19 37/20 38/23 39/20 40/2
40/25 41/17 41/24 42/4 42/10 42/11
42/15 42/15 43/4 43/12 45/3
wouldn't [4] 10/7 15/15 18/16 21/13
wrong [4] 5/7 10/10 41/13 42/9
wrote [1] 33/20

Y

y'all [1] 8/23
yahoo.com [2] 2/16 46/19
yeah [2] 25/19 38/16
years [11] 39/17 40/4 40/19 40/19 40/20
40/21 41/11 41/12 41/12 43/7 43/19
yes [48]
you [158]
you -- I [2] 9/21 19/23
you -- with -- can [1] 28/16
you'll [1] 23/22
you're [6] 10/6 19/13 23/15 23/25 29/8
45/12
young [1] 40/13
your [118]
yourself [1] 6/5
YOVANA [1] 2/12